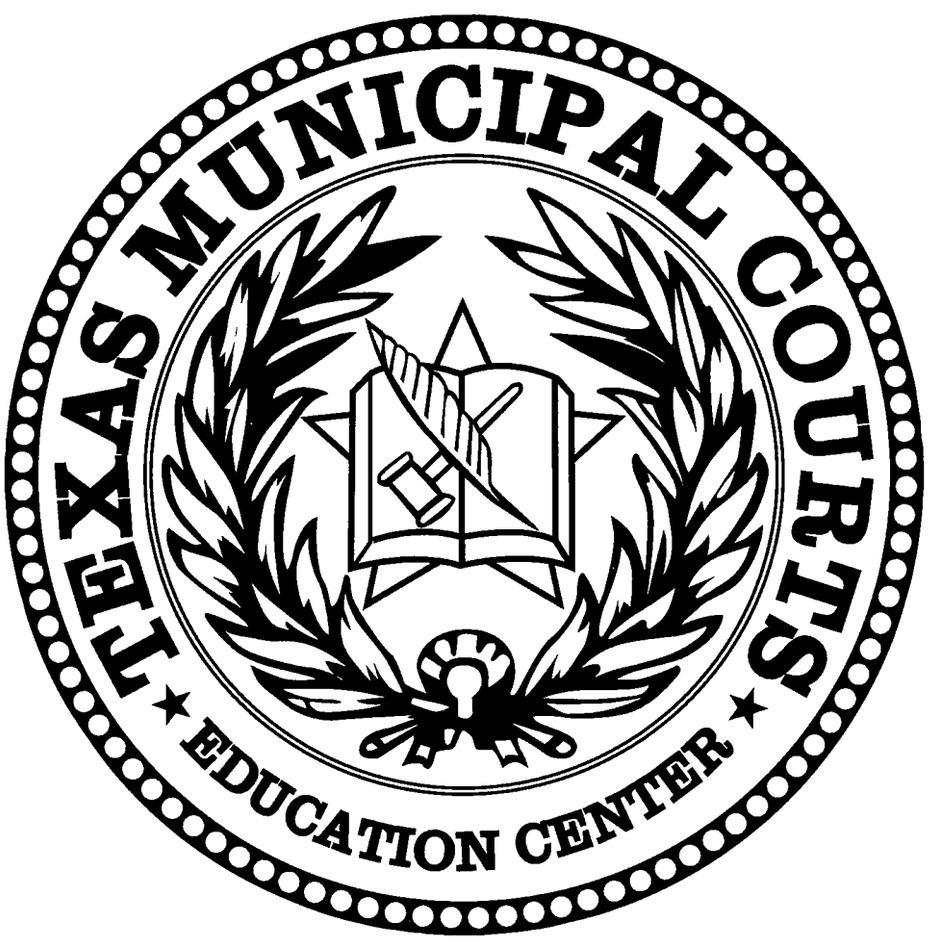
Judges Conference

2005-2006

* * * *

Texas Municipal Courts Education Center



TEXAS MUNICIPAL COURTS EDUCATION CENTER

COURSE MATERIAL
Austin
Judges Seminar
December 5-9, 2005

1609 Shoal Creek Boulevard, Suite 302 Austin, TX 78701
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Email: tmcec@tmcec.com
Web Page: www.tmcec.com

Funded by a grant from the Texas Court of Criminal Appeals

TMCEC IS A PROJECT OF THE TEXAS MUNICIPAL COURTS ASSOCIATION

AUSTIN

32-HOUR NEW JUDGES SCHOOL
December 5-9, 2005
Austin Doubletree North
6505 IH-35
Austin, TX 78752
512.454.3737

MONDAY, DECEMBER 5, 2005

10:00 - 1:00 p.m.	**Registration**
1:00 - 1:15 p.m.	**Welcome and Announcements** Tiffany Dowling, Program Attorney & Deputy Counsel, TMCEC, Austin
1:15 - 2:45 p.m.	**Court Decorum** Gary Ellsworth, Municipal Judge, City of Spearman
2:45 - 3:00 p.m.	**Break**
3:00 - 5:00 p.m.	**Judicial Ethics Orientation** Judy Spalding, State Commission on Judicial Conduct, Austin
	Optional Session:
5:15 - 6:30 p.m.	**Responder Session: Municipal Courts and the Texas Judicial System: Interpreting the Law** Ryan Kellus Turner, General Counsel, TMCEC

TUESDAY, DECEMBER 6, 2005

6:45 - 8:00 a.m.	**Breakfast**
8:00 - 9:30 a.m.	**An Introduction to Ordinances** Bonnie Goldstein, Municipal Judge, City of Cockrell Hill
9:30 - 9:40 a.m.	**Break**
9:40 - 11:20 a.m.	**Driving Safety and Deferred Disposition Procedures** Ryan Kellus Turner, General Counsel, TMCEC, Austin
11:20 - 11:30 a.m.	**Break**
11:30 - 12:00 p.m.	**Q&A** Tiffany Dowling, Program Attorney & Deputy Counsel, TMCEC, Austin
12:00 - 1:00 p.m.	**Lunch**
1:00 - 3:00 p.m.	**Overview of Processing Cases** Margaret Robbins, Program Director, TMCEC, Austin
3:00 - 3:10 p.m.	**Break**
3:10 - 5:00 p.m.	**Traffic Law** Linda Frank, Municipal Judge, City of Plano & Prosecutor, City of Arlington

WEDNESDAY, DECEMBER 7, 2005

6:45 - 8:00 a.m.	**Breakfast**
8:00 - 9:50 a.m.	**The Adjudication of Juveniles in Municipal Court** Deanna Burnett, Municipal Judge, City of Carrollton
9:50 - 10:00 a.m.	**Break**
10:00 - 10:30 a.m.	**Juveniles Q & A** Deanna Burnett, Municipal Judge, City of Carrollton

10:30 - 10:40 a.m.	**Break**
10:40 - 12:00 p.m.	**Court Costs** Rene Henry, Office of Court Administration, Austin
12:00 - 1:00 p.m.	**Lunch**
1:00 - 2:30 p.m.	**Setting Bonds** Katherine Peake, Municipal Judge, Fredericksburg
2:30 - 2:40 p.m.	**Break**
2:40 - 5:00 p.m.	**Duties and Responsibilities of the Texas Magistrate** Robin A. Ramsay, Presiding Municipal Judge, City of Denton
	Optional Session:
6:30 - 8:00 p.m.	**TMCEC Cinematic Triple Feature: "*Pro Se* Defendants in Municipal Court," "I Object!" and "The Role of Municipal Court in City Government"** With your TMCEC hosts: Ryan Kellus Turner, Margaret Robbins and Tiffany Dowling

THURSDAY, DECEMBER 8, 2005

6:45 - 8:00 a.m.	**Breakfast**
8:00 - 10:00 a.m.	**Authorities & Duties** Margaret Robbins, Program Director, TMCEC, Austin
10:00 - 10:10 a.m.	**Break**
10:10 - 11:20 p.m.	**Magistrates Order of Emergency Protection** John Vasquez, Municipal Judge, City of Austin
11:20 - 11:30 a.m.	**Break**
11:30 - 12:00 p.m.	**Magistrate Q&A** Robin A. Ramsay, Presiding Municipal Judge, City of Denton
12:00 - 1:00 p.m.	**Lunch**
1:00 - 2:10 p.m.	**Contempt** Robert Barfield, Municipal Judge, City of Pasadena
2:10 - 2:20 p.m.	**Break**
2:20 - 2:50 p.m.	**Q&A** Tiffany Dowling, Program Attorney & Deputy Counsel, TMCEC, Austin
2:50 - 5:00 p.m.	**Judgment, Indigence & Enforcement** Ryan Kellus Turner, General Counsel, TMCEC, Austin

FRIDAY, DECEMBER 9, 2005

6:45 - 8:00 a.m.	**Breakfast**
8:00 - 9:30 a.m.	**Pro Se Defendants** C. Victor Lander, Municipal Judge, City of Dallas
9:30 - 9:40 a.m.	**Break**
9:40 - 12:00 p.m.	**An Introduction to Evidence** Vonciel Jones Hill, Attorney, Dallas
12:00 noon	**Adjourn**

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Austin — December 5-9, 2005

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ANNOUNCEMENTS

FOR

32-hour Judges Seminar Attendees

I

Welcome

II

Funding

Our Continuing Education classes are mandatory for each municipal judge in the state and are provided by a grant from the Texas Court of Criminal Appeals that is funded by dollars that are collected on each conviction.

The evening hospitality event is sponsored by the Texas Municipal Courts Association and is **not** funded by the grant nor public monies.

III

Notices to Attendees

The viewpoints of the instructors for this program do not necessarily express the opinions of the Texas Municipal Courts Education Center, its Board or Committees.

Federal and state statutes prohibit employment discrimination on the basis of disability, age, race, color, religion, sex, or national origin. Sexual harassment is included among the prohibitions. The TMCEC strongly disapproves of any form of discrimination or harassment at its seminars, meetings or within its work environment. Employees, participants, faculty and volunteers who have experienced or observed any acts which they believe may be prohibited by federal, state or common law, should report the incident to the TMCEC Executive Director immediately. All such alleged acts will be investigated and consideration given to the appropriate action, if any, to be taken.

The Texas Municipal Courts Education Center and the Texas Municipal Courts Association, as grantee, do not endorse, recommend or imply approval of any or all vendors represented in person or by materials/displays at or near TMCEC/TMCA sponsored meetings and seminars.

IV

Attendance

The Texas Municipal Courts Association Board of Directors has adopted the following policy: **All judges at the TMCEC seminars must attend and fully participate during all hours as designated by the schedule. Any undue tardiness to class or reading of non-pertinent materials, e.g. newspapers, magazines, etc., will place the judge in "non-compliant" status resulting in the loss of that particular class and the non-certification of the judge for that current year. In order to comply with certification rules, those judges in non-compliance must make up those hours lost at another seminar held within that fiscal year at his/her own expense.**

The Center staff will not inform you of your violation. They shall report the infraction to the Executive Director who will make the decision to certify or not. Any questions you might have with infraction and/or loss of certification must be taken up with the Executive Director.

Your badge is proof of identification. Please wear it at all times during the seminar. The badge also serves as your ticket to enter the room where the breakfasts and lunches are served.

Judges are expected to sign in when they register. If the TMCEC staff perceives that the seminar is not fully attended by all participants at all times, roll will be called or circulated. If you must leave the seminar for an emergency or if you become ill, we ask that you check out with the staff at the registration table.

Concurrent Sessions

During the seminar, there may be concurrent sessions offered giving you a choice of presentations taught at the same time. If requested by TMCEC staff, please sign up for your choice for each concurrent session on the attendance sheets provided at the registration tables. An announcement will be made giving more details about these sessions at a later time.

Program Materials

Your binder is provided to you by the Center and consists of all necessary documents you will need throughout the seminar. You will be provided with a different binder for each seminar you attend every year.

You must fill in the Certification Form with demographics in order to receive your certificate of completion. Without our receiving this form, we have no other proof of your attendance should you ever need it. You will receive this form at the end of the seminar.

There is also provided a faculty evaluation form which you are asked to fill in as the seminar progresses. Please write your comments fully and remember to add your thoughts for program improvement next year at the end of the form.

Breaks

You will be given several 10-minute breaks throughout the morning and afternoon sessions. This will allow you to smoke (outside) as there is no smoking permitted in the classrooms, dining rooms or areas adjoining the classrooms at any time. Refreshments will be provided in the designated area once each morning and afternoon. The afternoon break is provided courtesy of the Texas Municipal Courts Association.

Messages

There is a message board provided near the registration table. Please check it periodically. You should provide your office with the telephone number and extension.

Rooms

The Center pays for the cost of single rooms or double sleeping rooms for judges sharing a room with another judge or clerk and is direct billed for such. However, you must pay for all incidentals, including telephone charges, movies, room service, and cleaning. By the provisions of the grant, the Center **CANNOT** pay for these expenses. Please do not put us in any precarious position regarding this matter.

The hotel may or may not charge extra for your rooming guest. Please check with the hotel at the time of check-in. If there is any extra charge, you must pay this expense at checkout.

Smoking

The Texas Municipal Courts Association Board of Directors has adopted the following policy: **No one shall smoke in any classroom, dining rooms or any area adjacent to the classrooms during the TMCEC seminars. Smoking will be permitted only outside the hotel or other common areas away from the meeting rooms and break areas.**

Meals

Once the sessions begin, catered breakfasts and lunches are provided by the Center. Because of budget restrictions, the dinner meal is not provided at our cost.

Shuttle

If a shuttle is provided by the hotel to the airport, please sign up for its use on the morning of departure prior to breakfast.

Check out

The hotel has a set check out time. Please insure that you do not go beyond this time. Extra-day charges imposed by the hotel will be your responsibility.

CONTINUING EDUCATION UNITS

The Texas Municipal Courts Education Center will award 3.2 CEU to each participant who successfully completes the 32-Hour Judges' Program. The CEU is a nationally recognized unit designed to provide a record of an individual's continuing education accomplishments. Upon written request to the Center, a record will be made available as designated by the participant.

The CEU concept provides individuals with recognition for their efforts to update or broaden their knowledge, skills, or attitudes. Records of CEU awarded provide a framework within which individuals can develop and achieve long-range educational goals.

The availability of the CEU records and documentation permits individuals to maintain and transmit to others a record of their lifelong learning experiences. For example, individuals may use personal records of number of CEU earned for:

- Reporting maintenance or improvement of professional competence;
- Documenting continuing qualifications for renewing licensure, recertification, or registration; or
- Presenting evidence of personal and vocational growth and adjustment to meet changing career demands.

Probably the two most common uses of a CEU record by the individual learner are (1) to supply an employer or prospective employer with information on continuing education and training experiences pertinent to an occupational competence, and (2) to provide documentation to registration boards, certification bodies, or professional and occupational societies of continuing education undertaken to maintain or increase professional competence.

There is no relationship between CEU and academic credit. By definition, the CEU relates only to non-credit continuing education experiences. Academic credit applies specifically to degree requirements and CEU are not awarded for that purpose. No institutions of higher education are known to give automatic credit for CEU.

TEXAS MUNICIPAL COURTS EDUCATION CENTER
FACULTY ROSTER

32-Hour Regional Judges/Clerks Programs
Austin Doubletree North

Honorable Robert Barfield
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Honorable Gary Ellsworth
Municipal Judge
City of Spearman
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Honorable Linda Frank
Municipal Judge, Plano &
Chief Municipal Prosecutor, Arlington
City Attorneys Office
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Attorney
Law Office of Vonciel Jones Hill
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ABOUT THE SPEAKERS

ROBERT J. BARFIELD

Robert J. Barfield was born and raised in Pasadena, Texas. He is a graduate from Harvard College (1991) and the University of Houston Law Center (1993). He currently maintains a criminal defense practice focusing on Class C misdemeanors. Mr. Barfield is an Associate Judge in the City of Pasadena Municipal Court and Associate Judge in the Baytown Municipal Court. He also serves as a Prosecutor for the Texas City Municipal Court.

DEANNA BURNETT

Deanna Burnett is currently Municipal Judge in Carrollton, a position she has held since 1988. Additionally, she has served as Municipal Judge in Farmers Branch, Plano, and Coppell, Texas. She received her Bachelor of Arts from the University of Texas at Dallas and Juris Doctorate from Texas Tech School of Law, Lubbock. Judge Burnett has been a member of the State Bar of Texas since 1982.

TIFFANY DOWLING

Tiffany Dowling is a native of Amarillo, Texas. She is Program Attorney and Deputy Counsel for the Texas Municipal Courts Education Center. Ms. Dowling obtained her juris doctorate from The University of Texas School of Law, Austin, Texas. She received her bachelor of arts degree in Plan II and philosophy from The University of Texas at Austin.

GARY ELLSWORTH

Gary Ellsworth is a non-attorney judge and has served as the presiding judge for the City of Spearman, TX since December 1993 and presiding judge for the City of Gruver, TX since February 2003. Judge Ellsworth was recently elected to the Board for the Texas Municipal Courts Association as the Region I Director.

In addition to his judicial duties, Judge Ellsworth is the Emergency Management Coordinator for Hansford County. He also owns and operates the Lyric Cinema, Spearman's two-screen movie theatre.

Judge Ellsworth is a Partner in Education for the 4th grade at Spearman Elementary where he teaches the Junior Judges curriculum. In 2001, Judge Ellsworth served as a judicial mentor for the State Commission on Judicial Conduct.

But his favorite role in life is that of 'Papa' to his five grandchildren.

LINDA FRANK

Linda Frank is currently an Associate Municipal Judge for the City of Plano. She is also the Chief Municipal Prosecutor for the City of Arlington. She is the former Chief Municipal Prosecutor for the City of Plano.

Judge Frank is a graduate of the University of Oklahoma. She received her juris doctor from the Georgetown University Law Center in Washington, D.C. She received her license to practice law in Texas in 1981.

Judge Frank has served as faculty for the TMCEC since 1998. She has two daughters, both graduates of the University of Texas.

ANGELA LINK GARCIA

Angela L. Garcia is the Judicial Information Manager for the Office of Court Administration's Research and Court Services Division. Judicial Information staff is responsible for collecting, analyzing and publishing court activity statistics and other judicial data. Ms. Garcia has served in this position since 2001 and was extensively involved in the development of OCA's Trial Court Judicial Data Management System.

Prior to her employment with OCA, she worked as a business process and management analyst for Austin Municipal Court. While at the court, she served on the team that created the Downtown Austin Community Court, one of the first of its kind in the nation.

Ms. Garcia holds a master's degree in public affairs from the University of Texas at Austin and a bachelor's degree in international relations from the University of Southern California.

BONNIE LEE GOLDSTEIN

In 1990, Bonnie Goldstein began her legal career and over the course of her 15 years has practiced in the areas of state and local government law, government contracts and construction litigation, among others. In 2003, she opened her law office practicing predominantly in the areas of state and local government law. Since 1994, Judge Goldstein has served as the Assistant City Attorney for the Town of Flower Mound, City of McKinney, Texas, among others. She is currently the City Attorney for the City of Princeton and City of Italy. She routinely represents and advises local governments including contracts, procurement, construction, employment, code enforcement, land use, planning and zoning issues, variances, and municipal court.

Judge Goldstein received her Bachelor of Arts degree at Hood College, Frederick Maryland in 1984, and her law degree in 1990 from George Washington University, the National Law Center, in Washington, D.C. She has authored and presented papers to various groups, including the Texas Municipal League, the North Central Texas Council of Governments and Police Training Academy and the Texas Municipal Courts Education Center. Judge Goldstein is fluent in Spanish and was named Legal Counselor to the Mexican Consulate in Houston on March 20, 1998. In February of 2003 she was appointed the Presiding Judge for the City of Cockrell Hill and August 2004, she was appointed as an Associate Judge for the City of Dallas.

RENE HENRY

Rene Henry, CPA, was the Collections Project Manager in the Research & Court Services Section at the Office of Court Administration from October 1997 – September 2005. Prior to that, he worked at the Comptroller's Office for 20 years, 14 of which he spent working directly with cities and counties.

Mr. Henry holds a B.B.A. degree in accounting from the University of Texas at Austin and is a licensed certified public accountant.

VONCIEL JONES HILL

Judge Vonciel Hill was a Municipal Judge in Dallas 1987-2004. Prior to that, she served as Assistant City Attorney in Dallas, Staff Attorney for the Public Utility Commission of Texas, Assistant Law Librarian at Texas Southern University, Assistant Circulations Librarian at Prairie View A&M University, and an high school English teacher in Atlanta.

Judge Hill holds many degrees including a BA in English from the University of Texas, Master of Library Science from Atlanta University, Master of Arts in History from Rice University, her Juris Doctorate from the University of Texas, and her Master of Divinity from Perkins School of Theology at Southern Methodist.

Judge Hill is active in many professional, community and religious organizations including serving as a Methodist Minister in the British Methodist Church in England.

C. VICTOR LANDER

Victor Lander was born in Georgia and grew up in New York City and Virginia. He received his Bachelor of Arts with honors from Morehouse College in Atlanta, Georgia and his Juris Doctor from the University of Texas in Austin. Judge Lander worked for the Federal Communications Commission in Washington, D.C., before joining his father, the late Fred L. Lander, III, in the private practice of law in state and federal courts in Dallas. He was appointed an Associate (part-time) Municipal Judge for the City of Dallas in 1991 and has served as a full-time Municipal Judge for Dallas since 1996. He was named Outstanding Municipal Judge by the Texas Municipal Courts Association in 2003.

JIM LEHMAN

Jim Lehman is currently the Collections Specialist for the Research & Court Services Section of the Office of Court Administration. He joined OCA in January of 1998. Prior to OCA, Mr. Lehman was the Collections Manager for the Dallas County Criminal Courts and is largely responsible for successfully implementing that county's fine collection program. Mr. Lehman spent over 20 years in the private sector finance/collections industry prior to joining Dallas County.

Mr. Lehman holds a Bachelor of Arts degree from Central State University at Edmond, Oklahoma, where he studied Public Administration and Business Administration. He currently serves as Executive Director of the Governmental Collectors Association of Texas.

Mr. Lehman is the recipient of the Justice Achievement Award from the NCSC, and has been published in various publications including *County Progress Magazine, Courts Today,* and *GCAT Newsletter.*

SANDRA L. MABBETT

Sandra Mabbett is the Judicial Information Specialist for the Office of Court Administration's Research and Court Services Division. Judicial Information staff is responsible for collecting, analyzing and publishing court activity statistics and other judicial data. She has served in this position since 2004.

Prior to her employment with OCA, she was employed by the Internal Revenue Service for 25 years where she was a manager in the Examination Operation, responsible for a group of tax auditors and tax examiners conducting audits of individual taxpayers.

Ms. Mabbett is a native of upstate New York who moved to Austin in 1978.

KATHERINE PEAKE

Katherine Peake has served as the Municipal Judge for the City of Fredericksburg since 1984. Prior to this, she was briefly in private practice, and she served as the Assistant District Attorney for the 216th Judicial District from 1981-82. She received her law degree from The University of Denver in 1980 and her B.A. in anthropology from the University of New Mexico in 1975.

HILDA PHARISS

Hilda Phariss graduated from Sul Ross State University located in Alpine, Texas in 1976. Ms. Phariss taught Science classes in Texas public schools for five years at three different Texas school districts: Pecos, Dublin, and at Yates High School in Houston.

Ms. Phariss went to work for the City of Bryan in March of 1983 in the City Secretary's office and was promoted to Court Administrator in July 1985. Ms. Phariss has been very active in this profession as a leader in the field of court administration, particularly involved with the Texas Court Clerks Association since 1985. She was elected Vice President from 1989 through 1992 and was elected President of the association from 1992 through 1994. She was the TML affiliate representative from 1994 to 1996. She has also been very involved with the Gulf Coast Chapter since 1985 and held the position of President twice, 1990 -1992 and 1996-1998.

Ms. Phariss has been a staff member of the Texas Municipal Courts Education Center teaching various subjects since 1991. She is currently a member of the TMCA education committee and chairs the TCCA Education Committee. She is currently a Level II certified court clerk and is also a certified study session facilitator for Level I and Level II. She is a State of Texas Licensed Court Interpreter in Spanish.

Ms. Phariss is very active within her community. She is a presenter in English and Spanish for the Bryan Police Department Citizens Police Academy. She is a volunteer at the Dispute Resolution Center as a bilingual certified mediator. She is currently the President of the local Habitat for Humanity Affiliate and has been a volunteer the last five years. She is a member of the Hispanic Forum in Bryan, Texas.

ROBIN A. RAMSAY

Robin Ramsay is currently a licensed attorney and the Presiding Municipal Judge for the City of Denton. Mr. Ramsay received his undergraduate degree from Southern Methodist University in Dallas and his law degree from Texas Tech University in Lubbock.

Prior to becoming a judge, Mr. Ramsay served as Students' Attorney for the University of North Texas and as an Adjunct Professor of Business Law. After leaving the University of North Texas and prior to his current appointment, Mr. Ramsay practiced law with the Hammerle Law Firm with offices in Lewisville and Denton.

Mr. Ramsay has received his accreditation for the American Academy of Attorney Mediators and currently acts as a Mediator for both pre-litigation and litigated matters by assignment of Court and at the request of the parties or their attorneys. Mr. Ramsay also serves as alternate Mental Health Magistrate for Denton County at the assignment of the Denton County Probate Court.

MARGARET ROBBINS

Margaret Robbins is the Program Director for the Texas Municipal Courts Education Center, a position she has held since 1986.

Before joining the TMCEC staff, Ms. Robbins was Court Clerk for three years and then Municipal Court Judge for four years for the City of Cedar Park. Ms. Robbins has served as author and editor to numerous publications including the TMCEC newsletter, TMCEC *Clerks' Procedures Manual*, and the Clerks' Certification Study Guides.

JUDY SPALDING

Judy Spalding is Commission Counsel for the State Commission on Judicial Conduct. She has been practicing law since 1985. She received her undergraduate degree in Journalism from the University of Texas at Austin, and her law degree from Southern Methodist University.

Until she moved to Austin in 2002 to begin serving with the Commission, Ms. Spalding was a trial lawyer in private practice in Dallas, mostly in the area of family law. She is a member of the State Bar of Texas, and is a Fellow of both the Texas Bar and Dallas Bar Foundations.

RYAN KELLUS TURNER

Ryan Kellus Turner is General Counsel for the Texas Municipal Courts Education Center. Prior to joining the Center, he served as Briefing Attorney for Judge Sharon Keller at the Texas Court of Criminal Appeals. Mr. Turner obtained his juris doctorate from Southern Methodist University School of Law, Dallas, Texas. He received his bachelor's degree in psychology from St. Edward's University, Austin, Texas, where he now teaches as an adjunct faculty member in the School of Behavioral and Social Sciences. In 2004 he received the School's Adjunct Teaching Excellence Award. Mr. Turner is currently Deputy City Attorney for the City of Dripping Springs and previously served as a Special Assistant County Attorney for Kendall County.

A native Texan, Mr. Turner was raised in the north Texas town of Vernon. He is the co-author of the book *Lone Star Justice: A Comprehensive Overview of the Texas Criminal Justice System.*

JOHN R. VASQUEZ

John R. Vasquez is presently an Associate Municipal Judge for the City of Austin. Before his appointment to the Austin Municipal Court in 1996, Judge Vasquez was in private law practice specializing in employment and labor law.

Judge Vasquez earned his BBA in Accounting from the University of Texas at Arlington in 1974 and his Juris Doctor from the University of Texas at Austin in 1980. As a new lawyer, he was selected as a Reginald Heber Smith Fellow working with Texas Rural Legal Aid. In 1984, he came to Austin as Chief of the Charitable Trusts Section of the Texas Attorney General's Office. In 1988, Judge Vasquez left the Attorney General's Office and became Special Counsel for the Texas State Auditor's Office.

Judge Vasquez is licensed in state court (1980), the federal district court (Western District), and the U.S. Fifth Circuit Court of Appeals.

Judge Vasquez has been involved in numerous local civic and charitable activities. He is presently the Board President of Avance – Austin Chapter (a parent and family education program) and a member of the National

Board of Avance. Previously, he served as president of Austin Families (a support and training organization for childcare providers). For his work on educational issues, Judge Vasquez has been honored by LULAC.

Judge Vasquez and his wife, Maria, are the parents of three daughters.

WELCOME!

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TEXAS MUNICIPAL COURTS EDUCATION CENTER
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BEFORE TAKING THE BENCH . . .

ALL Municipal Court judges and appointed Clerks of Municipal Courts must file two sworn documents: a Statement of Appointed or Elected Officer and an Oath of Office, both to be filed with your city.

The Statement is no longer filed with the Secretary of State due to a 2001 amendment to the Texas Constitution.

AFTER appointment and BEFORE taking the Oath of office, each judge and appointed clerk must file a Statement with his or her city.

THE TEXAS CONSTITUTION REQUIRES THAT THE STATEMENT OF APPOINTED/ELECTED OFFICER MUST BE FILED BEFORE THE OATH IS TAKEN. If you are using a form that has the Statement of Appointed/Elected Officer and the Oath of Office on the same page, execute the Statement but leave the Oath blank when you submit it to your city. If both are filled out, your city may reject it. Execute the Oath of Office after you submit the Statement of Appointed/Elected Officer.

After the Statement is filed with your city, the Oath of Office must be administered to all judges and appointed clerks. This oath is also filed with your city.

Judges and clerks should execute both a new Statement and a new Oath of Office at the beginning of each new term.

We suggest that you personally confirm that the Statement is filed. If you cannot keep the original Statement or Oath of Office, we suggest you keep a certified copy.

Following is a copy of each of these statements.

STATEMENT OF APPOINTED/ELECTED OFFICER (Pursuant to Tex. Const. Art. XVI, Sec. 1(c), amended 2001)

THE STATE OF TEXAS

Statement of Appointed/Elected Officer
(Please type or print legibly)

"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 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 or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God."

_____
Affiant

_____
Office to Which Appointed

_____
City

Sworn to and subscribed before me by affiant on this _____ day of _____, 20___.

_____
Signature of Person Administering Oath
(Notary Public in and for the State of Texas
or Judge of a Court of Record)

(municipal court seal)

_____
Printed Name

_____
Title

File with your city before filing the Oath of Office.

In the name and by the authority of

THE STATE OF TEXAS

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 the laws of the United States and of this State, so help me God.

_____
Affiant

Sworn to and subscribed before me by affiant on this _____ day of _____, 20___.

_____
Signature of Person Administering Oath
(Notary Public in and for the State of Texas
or Judge of a Court of Record)

(municipal court seal)

_____
Printed Name

_____
Title

File with your city before filing the Oath of Office.

TMCEC RESOURCES MATERIALS – ADDITIONAL COPIES*
PRICE LIST AND ORDER FORM FOR MUNICIPAL COURTS

Qty	Cost	Title	Extended Price
_____	20.00	The Municipal Judge's Book	_____
_____	5.00	Role of Municipal Court in City Government	_____
_____	20.00	The Judge/Mock Trial videotape	_____
_____	20.00	2004 Bench Book for Municipal Court Judges	_____
_____	5.00	2004 CD-ROM Bench Book for Municipal Court Judges	_____
_____	5.00	2004 Diskette (PC 3.5") Bench Book for Municipal Court Judges	_____
_____	20.00	2004 TMCEC Municipal Court Forms Book	_____
_____	5.00	2004 CD-ROM TMCEC Municipal Court Forms Book	_____
_____	5.00	2004 Diskette (PC 3.5") TMCEC Municipal Court Forms Book	_____
_____	25.00	Level I Clerks Certification Study Guide (looseleaf)	_____
_____	25.00	Level II Clerks Certification Study Guide (looseleaf)	_____
_____	8.50	Level III Clerks Certification Study Questions	_____
_____	N/C	Quick Reference Trial Handbook	_____
_____	N/C	Rules of Evidence	_____
		Subtotal	_____
		Shipping charge (based on your order – call TMCEC for cost)	_____
		TOTAL	

*Note: All municipal courts should have received one copy of these materials at no charge. This order form is to order ***additional*** copies.

All orders must be prepaid. Checks payable to Texas Municipal Courts Education Center.

Send order to:

Texas Municipal Courts Education Center 1609 Shoal Creek Boulevard, Suite 302 Austin, Texas 78701 (512) 320-8274

Name: _____

Court: _____

Court Address: _____

City, State, Zip: _____

Court Telephone Number: (____) _____ Email Address: _____

MERCHANDISE PRICE LIST

The following items will be available for purchase at the TMCEC Registration desk. Sales will be conducted during breaks and lunch during the first day of the conference only.

Checks, cash and VISA/Mastercard are accepted in payment when purchasing at the conference. Sales will be ongoing until 4:00 p.m. during the first day of the program.

Ceramic Mugs	$7
CAFÉ MUGS	$8
Insulated Mugs	$6
Short Sleeve T-Shirts	
TODDLERS (4T)	$10
CHILDRENS	$11
ADULT SIZES S, M, L, XL	$13
ADULT XXL & XXXL	$15
Long Sleeve T-Shirts	
SIZES S, M, L, XL	$18
XXL & XXXL	$20
Golf Shirts	$25
Caps	$12
Maroon/Canvas Bag	$15
Ties	$15
Tie Tack/Lapel Pin	$5
Children's Book	$15
"Lone Star Justice" Book	$25

Orders may be placed online too. See the TMCEC website at **www.tmcec.com.**

Thanks!

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COURT DECORUM

Presented by

Gary L. Ellsworth
Municipal Court Judge
Spearman

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

1. Assess, as judges, their compliance with Article 45.001(2) of the Code of Criminal Procedure.
2. List ways that a judge can create an environment that ensures appropriate dignity without undue formalism
3. Identify the benefits of maintaining the appropriate level of formality in court proceedings
4. Identify the consequences of failing to maintain appropriate dignity in the court proceedings.
5. Identify roadblocks to implementing measures assuring appropriate dignity in court proceedings.

Courtroom Decorum

- Environment
- Announcements
- Rules
- And, the other "R" word

Approaches

Legal
Philosophical
Practical

Are you a Low Volume or High Volume Court ?

Low Volume Court
Processes less than 2,500 cases/year

High Volume Court
Processes over 250,000 cases/year

Legal Benefits of Formality

- CCP Article 45.001 sec. 2 & 3
- Code of Judicial Conduct Preamble
- Code of Judicial Conduct Canon 3 (B)(a)
- Decorum & Control

Philosophical Benefits of Formality

- Quote from Judge Learned Hand
- Judge's workplace is unique
- Benefits of some formality
- Quote from 'Lone Star Justice'

Announcements

Formality vs. Practical

Rules

- 1171 Judges across Texas were asked, "Do you have posted or written rules of decorum in your courtroom ?"
- Survey said -
- Yes - 23.2%
- No - 71.6%

The other "R" word

- When 1171 Municipal Judges in Texas were asked, "During court proceedings, do you wear a robe", the survey said ??????

  - Always - 20.2%
  - Most of the time - 8%
  - Sometimes - 10.5%
  - Never - 56%

SYMBOLS

Symbolic values

State Seal vendors

Flag etiquette

Q's & A's

Good Luck !!!

CHAPTER FORTY-FIVE. JUSTICE AND MUNICIPAL COURTS

SUBCHAPTER A. GENERAL PROVISIONS

Art. 45.001. Objectives of Chapter

The purpose of this chapter is to establish procedures for processing cases that come within the criminal jurisdiction of the justice courts and municipal courts. This chapter is intended and shall be construed to achieve the following objectives:

(1) to provide fair notice to a person appearing in a criminal proceeding before a justice or municipal court and a meaningful opportunity for that person to be heard;

(2) to ensure appropriate dignity in court procedure without undue formalism;

(3) to promote adherence to rules with sufficient flexibility to serve the ends of justice; and

(4) to process cases without unnecessary expense or delay.

Added by Acts 1999, 76th Leg., ch. 1545, § 6, eff. Sept. 1, 1999.

Art. 45.002. Application of Chapter

Criminal proceedings in the justice and municipal courts shall be conducted in accordance with this chapter, including any other rules of procedure specifically made applicable to those proceedings by this chapter. If this chapter does not provide a rule of procedure governing any aspect of a case, the justice or judge shall apply the other general provisions of this code to the extent necessary to achieve the objectives of this chapter.

Added by Acts 1999, 76th Leg., ch. 1545, § 6, eff. Sept. 1, 1999.

Art. 45.003. Definition for Certain Prosecutions

For purposes of dismissing a charge under Section 502.407 or 548.605, Transportation Code, "day" does not include Saturday, Sunday, or a legal holiday.

Added by Acts 1999, 76th Leg., ch. 1545, § 6, eff. Sept. 1, 1999.

SUBCHAPTER B. PROCEDURES FOR JUSTICE AND MUNICIPAL COURTS

Art. 45.011. [905] [997] [962] Rules of Evidence

The rules of evidence that govern the trials of criminal actions in the district court apply to a criminal proceeding in a justice or municipal court.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Renumbered from Vernon's Ann.C.C.P. art. 45.38 and amended by Acts 1999, 76th Leg., ch. 1545, § 8, eff. Sept. 1, 1999.

Art. 45.012. Electronically Created Records

(a) Notwithstanding any other provision of law, a document that is issued or maintained by a justice or municipal court or a notice or a citation issued by a law enforcement officer may be created by electronic means, including optical imaging, optical disk, digital imaging, or other electronic reproduction technique that does not permit changes, additions, or deletions to the originally created document.

(b) The court may use electronic means to:

(1) produce a document required by law to be written;

(2) record an instrument, paper, or notice that is permitted or required by law to be recorded or filed; or

(3) maintain a docket.

(c) The court shall maintain original documents as provided by law.

(d) An electronically recorded judgment has the same force and effect as a written signed judgment.

(e) A record created by electronic means is an original record or a certification of the original record.

Text of subsec. (f) as added by Acts 1999, 76th Leg., ch. 701, § 2

(f) A statutory requirement that a document contain the signature of any person, including a judge, clerk of the court, or defendant, is satisfied if the document contains that signature as captured on an electronic device.

Text of subsec. (f) as relettered from subsec. (e) by Acts 1999, 76th Leg., ch. 1545, § 9

(f) A printed copy of an optical image of the original record printed from an optical disk system is an accurate copy of the original record.

(g) A justice or municipal court shall have a court seal, the impression of which must be attached to all papers issued out of the court except subpoenas, and which must be used to authenticate the official acts of the clerk and of the recorder. A court seal may be created by electronic means, including optical imaging, optical disk, or other electronic reproduction technique that does not permit changes, additions, or deletions to an original document created by the same type of system.

Added by Acts 1995, 74th Leg., ch. 735, § 2, eff. Sept. 1, 1995. Subsec. (a) amended by Acts 1999, 76th Leg., ch. 701, § 2, eff. Aug. 30, 1999; Subsec. (f) added by Acts 1999, 76th Leg., ch. 701, § 2, eff. Aug. 30, 1999. Renumbered from Vernon's Ann.C.C.P. art. 45.021 and amended by Acts 1999, 76th Leg., ch. 1545, § 9, eff. Sept. 1, 1999.

Art. 45.013. Filing With Clerk by Mail

(a) Notwithstanding any other law, for the purposes of this chapter a document is considered timely filed with the clerk of a court if:

(1) the document is deposited with the United States Postal Service in a first class postage prepaid envelope properly addressed to the clerk on or before the date the document is required to be filed with the clerk; and

(2) the clerk receives the document not later than the 10th day after the date the document is required to be filed with the clerk.

(b) A legible postmark affixed by the United States Postal Service is prima facie evidence of the date the document is deposited with the United States Postal Service.

(c) In this article, "day" does not include Saturday, Sunday, or a legal holiday. Added by Acts 1999, 76th Leg., ch. 1545, § 10, eff. Sept. 1, 1999.

CODE OF JUDICIAL CONDUCT

PREAMBLE

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code of Judicial Conduct are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

CANON 1

Upholding the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary is preserved. The provisions of this Code are to be construed and applied to further that objective.

CANON 2

Avoiding Impropriety and the Appearance of Impropriety In All of the Judge's Activities

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

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

C. A judge shall not knowingly hold membership in any organization that practices discrimination prohibited by law.

CANON 3

Performing the Duties of Judicial Office Impartially and Diligently

A. **Judicial Duties in General.** The judicial duties of a judge take precedence over all the judge's other activities. Judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

B. **Adjudicative Responsibilities.**

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.

(2) A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge shall require order and decorum in proceedings before the judge.

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

(5) A judge shall perform judicial duties without bias or prejudice.

(6) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or

socioeconomic status, and shall not knowingly permit staff, court officials and others subject to the judge's direction and control to do so.

(7) A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status against parties, witnesses, counsel or others. This requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceeding.

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

(a) communications concerning uncontested administrative or uncontested procedural matters;

(b) conferring separately with the parties and/or their lawyers in an effort to mediate or settle matters, provided, however, that the judge shall first give notice to all parties and not thereafter hear any contested matters between the parties except with the consent of all parties;

(c) obtaining the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond;

(d) consulting with other judges or with court personnel;

(e) considering an *ex parte* communication expressly authorized by law.

(9) A judge should dispose of all judicial matters promptly, efficiently and fairly.

(10) A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge's court in a manner which suggests to a reasonable person the judge's probable decision on any particular case. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge is a litigant in a personal capacity.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity. The discussions, votes, positions taken, and writings of appellate judges and court personnel

about causes are confidences of the court and shall be revealed only through a court's judgment, a written opinion or in accordance with Supreme Court guidelines for a court approved history project.

C. Administrative Responsibilities.

(1) A judge should diligently and promptly discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

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

(3) A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

(5) A judge shall not fail to comply with Rule 12 of the Rules of Judicial Administration, knowing that the failure to comply is in violation of the rule.

D. Disciplinary Responsibilities.

(1) A judge who receives information clearly establishing that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the State Commission on Judicial Conduct or take other appropriate action.

(2) A judge who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or

fitness as a lawyer in other respects shall inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action.

Flag Etiquette

STANDARDS of RESPECT

The Flag Code, which formalizes and unifies the traditional ways in which we give respect to the flag, also contains specific instructions on how the flag is not to be used. They are:

- The flag should never be dipped to any person or thing. It is flown upside down only as a distress signal.
- The flag should not be used as a drapery, or for covering a speakers desk, draping a platform, or for any decoration in general. Bunting of blue, white and red stripes is available for these purposes. The blue stripe of the bunting should be on the top.
- The flag should never be used for any advertising purpose. It should not be embroidered, printed or otherwise impressed on such articles as cushions, handkerchiefs, napkins, boxes, or anything intended to be discarded after temporary use. Advertising signs should not be attached to the staff or halyard
- The flag should not be used as part of a costume or athletic uniform, except that a flag patch may be used on the uniform of military personnel, fireman, policeman and members of patriotic organizations.
- The flag should never have placed on it, or attached to it, any mark, insignia, letter, word, number, figure, or drawing of any kind.
- The flag should never be used as a receptacle for receiving, holding, carrying, or delivering anything.

When the flag is lowered, no part of it should touch the ground or any other object; it should be received by waiting hands and arms. To store the flag it should be folded neatly and ceremoniously.
The flag should be cleaned and mended when necessary.
When a flag is so worn it is no longer fit to serve as a symbol of our country, it should be destroyed by burning in a dignified manner.

Note: Most American Legion Posts regularly conduct a dignified flag burning ceremony, often on Flag Day, June 14th. Contact your local American Legion Hall and inquire about the availability of this service.

Displaying the Flag Outdoors

When the flag is displayed from a staff projecting from a window, balcony, or a building, the union should be at the peak of the staff unless the flag is at half staff.

When it is displayed from the same flagpole with another flag - of a state, community, society or Scout unit - the flag of the United States must always be at the top except that the church pennant may be flown above the flag during church services for Navy personnel when conducted by a Naval chaplain on a ship at sea.

When the flag is displayed over a street, it should be hung vertically, with the union to the north or east. If the flag is suspended over a sidewalk, the flag's union should be farthest from the building.

When flown with flags of states, communities, or societies on separate flag poles which are of the same height and in a straight line, the flag of the United States is always placed in the position of honor - to its own right.

..The other flags may be smaller but none may be larger.

..No other flag ever should be placed above it.

..The flag of the United States is always the first flag raised and the last to be lowered.

When flown with the national banner of other countries, each flag must be displayed from a separate pole of the same height. Each flag should be the same size. They should be raised and lowered simultaneously. The flag of one nation may not be displayed above that of another nation.

Raising and Lowering the Flag

The flag should be raised briskly and lowered slowly and ceremoniously. Ordinarily it should be displayed only between sunrise and sunset. It should be illuminated if displayed at night.

The flag of the United States of America is saluted as it is hoisted and lowered. The salute is held until the flag is unsnapped from the halyard or through the last note of music, whichever is the longest.

Displaying the Flag Indoors

When on display, the flag is accorded the place of honor, always positioned to its own right. Place it to the right of the speaker or staging area or sanctuary. Other flags should be to the left.

The flag of the United States of America should be at the center and at the highest point of the group when a number of flags of states, localities, or societies are grouped for display.

When one flag is used with the flag of the United States of America and the staffs are crossed, the flag of the United States is placed on its own right with its staff in front of the other flag.

When displaying the flag against a wall, vertically or horizontally, the flag's union (stars) should be at the top, to the flag's own right, and to the observer's left.

Parading and Saluting the Flag

When carried in a procession, the flag should be to the right of the marchers. When other flags are carried, the flag of the United States may be centered in front of the others or carried to their right. When the flag passes in a procession, or when it is hoisted or lowered, all should face the flag and salute.

The Salute

To salute, all persons come to attention. Those in uniform give the appropriate formal salute. Citizens not in uniform salute by placing their right hand over the heart and men with head cover should remove it and hold it to left shoulder, hand over the heart. Members of organizations in formation salute upon command of the person in charge.

The Pledge of Allegiance and National Anthem

The pledge of allegiance should be rendered by standing at attention, facing the flag, and saluting.

When the national anthem is played or sung, citizens should stand at attention and salute at the first note and hold the salute through the last note. The salute is directed to the flag, if displayed, otherwise to the music.

The Flag in Mourning

To place the flag at half staff, hoist it to the peak for an instant and lower it to a position half way between the top and bottom of the staff. The flag is to be raised again to the peak for a moment before it is lowered. On Memorial Day the flag is displayed at half staff until noon and at full staff from noon to sunset.

The flag is to be flown at half staff in mourning for designated, principal government leaders and upon presidential or gubernatorial order.

When used to cover a casket, the flag should be placed with the union at the head and over the left shoulder. It should not be lowered into the grave.



http://www.usflag.org/flag.etiquette.html

VENDORS LICENSED BY THE TEXAS SECRETARY OF STATE TO REPRODUCE AND SELL THE STATE SEAL OF TEXAS

Brush Creek Trading Co.
2417 Robinhood Drive
Canyon Lake, TX 78133
(830) 899-5292

Cook – Webber Design
10855 Barman Ave.
Culver City, CA 90230
(650) 322-0808

James Avery Craftsman, Inc.
PO Box 2291367
Kerrville, TX 78029
(210) 895-1120

Montana Siversmiths, Inc.
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Columbus, MT 59019
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7118 Oak Hill Road
Manvel, TX 77578
(281) 489-9329

Rewards, Inc.
9722 Great Hills Trail #300
Austin, TX 78759
(512) 502-9799

Roots Rocks, Inc.
4307 Andalusia
Austin, TX 78759
(512) 794-1009

Stick It In Stones
PO Box 54687
Oklahoma City, OK 73157
(405) 722-2636

Virginia Metalcrafters
1010 East Main Street
Waynesboro, VA 22980
(703) 949-9415

TDJC - Manufacturing & Logistics Division
c/o Robert G. Cade, Plant Manager
Wynne Unit
Hwy 75N & FM 2821
Huntsville, Texas 77349
Phone: 936.291.5113 or 5131
Fax: 936.291.5116

Municipal Court Recorder

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A Statistical "Snap Shot"

of Texas Municipal Courts and Decorum-related Practices

By Ryan Kellus Turner, TMCEC Program Attorney & Deputy Counsel
and Seth Johnson, Former TMCEC Program Assistant

This special issue of the *Municipal Court Recorder* focuses predominantly on the subject of court decorum. It also marks the final installment of the *Recorder* for the 2002 Academic Year.

During the 2000-2001 academic year, all municipal judges attending TMCEC judicial education programs were asked to complete a survey gauging various aspects of their court decorum practices. Of an estimated 1,236 judges surveyed, 1,171 judges replied. Independently, various pieces of data collected provide insight into the attitudes, demographics, and practices of the diverse Texas municipal courts. The data collectively provides a fascinating "snap shot" of decorum-related issues and a better profile of Texas municipal courts.

While much of this data speaks for itself, certain pieces warrant analysis. While much of the data provides straightforward answers, other pieces of data raise some interesting, yet fundamental, questions. The authors try not to let such questions linger. Analysis and commentary are offered. However, as you, the reader, are likely aware, there is often an inherent danger in human efforts to construe such statistical data. Keep this caveat in mind as you review the analysis accompanying the data. Certainly the data from the survey can be construed in more than one way. Presumably, that is what makes reading articles such as this one both provocative and entertaining.

I. Decorum

A. Correlation Between Volume and Formalism

There is a danger in generalizing about municipal courts. This is especially true in the context of caseload. Municipal courts can be divided into six categories depending on the volume of cases adjudicated yearly (see Figure 1). A "low volume" court processes under 2,500

Snap Shot continued on page 6

Finding Balance

Court Decorum in Local Trial Courts: The Struggle of Finding Balance Between Appropriate Dignity and Undue Formalism

By Ryan Kellus Turner, TMCEC Program Attorney & Deputy Counsel

Justice does not depend upon legal dialectics so much as upon the atmosphere of the courtroom, and that in the end depends primarily upon the judge.

– Judge Learned Hand[1]

All judges are guardians of the inherent dignity the public has historically associated with courts.[2] Described as "hallowed places of quiet dignity,"[3] American courts not only serve as forums for adjudicating alleged wrongdoing, they embody the important appearance of authority, vital to preserving the public's perception of an orderly society.

Balance continued on page 10

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AROUND THE STATE

Smith Named Judicial Fellow

Municipal Judge Robin D. Smith of Midland was recently named the National Highway Traffic Safety Administration (NHTSA) Judicial Fellow. Judge Smith's duties will include the promotion of NHTSA's safety policies and representing judicial perspective in outreach activities, such as publications and educational conferences. He will also be providing judicial insight to various Department of Transportation officials on policy and position matters. NHTSA's main focus is reducing the number of injuries and lives lost on the highways. Among the primary objectives of NHTSA are reducing driving while impaired cases and promotion of seat belt use. Judge Smith is a former TMCA President, currently serves as the TMCA Region V Board Director, and recently received the prestigious *Michael J. Neal Outstanding Jurist Award* from the Municipal Judges Section of the State Bar of Texas.

Clerks Certification

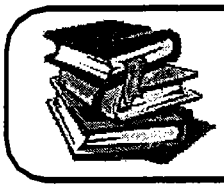
The Municipal Court Clerks Certification Program is pleased to announce that six clerks have attained the highest level of distinction as Certified Municipal Court Clerk, the third level of the program. They are now entitled to bear the designation of CMCC after their name. *Listed in order of completion:*

Jennifer Sullivan, CMCC (Katy)
Connie Crenshaw, CMCC (Luling)
Lueveda Posey, CMCC (Copperas Cove)
Janell Kucera, CMCC (Sugar Land)
Alicia St. Cyr, CMCC (Watauga)
Susie Garcia, CMCC (San Antonio)

Over the summer, many clerks completed the testing, educational requirements, and application at the various levels. TMCEC congratulates all on their achievement and encourages all clerks to consider participation in the program. In some cities, certification at each level results in increased compensation and in most cities there is recognition by city officials. Clerks in the program report that not only does participation increase their competence at their jobs, but also their self-confidence and morale. The total numbers of clerks completing each level are shown below:

Level I: 403
Level II: 101
Level III: 6

The Texas Court Clerks Association (TCCA), Texas Municipal Courts Association (TMCA), and the Texas Municipal Courts Education Center (TMCEC) sponsor the program. Questions about the program should be directed to Leisa Hardin (TCCA Education Committee Chairperson) at 817/297-2201 or Jo Dale Bearden (TMCEC Program Coordinator) at 800/252-3718.



FROM THE GENERAL COUNSEL

W. Clay Abbott

Decorum v. Demeanor

In this edition of *The Recorder* you will find excellent articles on court decorum by Ryan Kellus Turner. It is important, as the articles eloquently make the point, that the court require proper decorum in the courtroom during proceedings. An unordered court of law brings discredit to the law and creates the perception that justice is abandoned. Trial judges must maintain decorum as a matter of ethical mandate. Canon 3B(3) of the Code of Judicial Conduct states, "A judge shall require order and decorum in proceedings before the judge."

On the other hand, the judge is also required by Canon 3B(4) to be "patient, dignified and courteous" to all persons who appear before the court. This requirement of proper judicial demeanor arrives right on the heels of the requirement of order and decorum. These two requirements result in the court having to be authoritative, while avoiding being autocratic.

The Commission on Judicial Conduct has provided an example of failing to strike this balance in a public admonition on June 21, 2002. Justice of the Peace Patricia Ott was admonished for violating Canon 3B(4) by ordering a disruptive four-year-old child of a prospective juror removed from the courtroom, while ordering the mother to stay. The judge attempted to defend her action by arguing her obligation to maintain order and decorum. The Commission rejected that defense. While proper decorum is essential to proper court proceedings it is not an excuse to abandon a proper judicial demeanor.

Ethics and the Media

In the middle of our whirlwind tour of the State of Texas, the rules of the topic we were covering changed. On August 21, 2002, the Texas Supreme Court amended Canon 3B(10) and repealed Canon 5(1) of the Code of Judicial Conduct pursuant to the holding of the U.S. Supreme Court in *Republican Party of Minnesota v. White,* 122 S.Ct. 2528 (2002). That case held that a provision similar to Canon 5(1) violated an elected judges' First Amendment rights to political speech. The changes in Canon 3B(10) added judicial candidates to the persons covered by that canon. The U.S. Supreme Court's opinion addressed only elected judges, but the changes to the canons make no such distinction. One Supreme Court Justice—Nathan Hecht—cautioned that the canons as amended still may not pass constitutional scrutiny. Needless to say, the changes made are probably not the final ones.

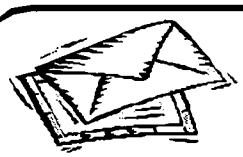
Many candidates pledged to maintain the previous standard. But, just as we emphasized in our traveling course, some accommodation must be made in order to assure free speech and freedom of the press and still provide due process in the neutrality of the fact finder. It would be wonderful if we could simply ignore politics, but that position is naive. Perhaps we can best hold the position that judges are more than political animals. Many judges are emphasizing that the Rules of Judicial Conduct are minimum standards, not exemplary guidelines. The public may want to know a judge's position on every issue, but what they need to know is that the judge enters his or her trial with an open mind and all of the alternatives open as well. The public needs to be assured that our system works—and I believe it does—and that our judges are above the clamor of the press and the fluidity of politics.

A copy of the Texas Supreme Court's statement, Justice Hecht's Opinion, and the changes to the canons can be accessed on the TMCEC website at www.tmcec.com.

Corrections

In two FY 02 issues of the *Municipal Court Recorder*, there were two significant errors. Pam Liston, who wrote *Hate Crimes: Prosecute in Municipal Court?* in the March 02 issue is a prosecutor for the City of Rowlett, not the City of Dallas. Judge Daniel Sims of the Houston Municipal Court was the judge who volunteered to work with Houston clerks in the evenings and weekends to study for the certification exams. He was not given proper credit in the July 02 issue.

We apologize to both for the mistakes, and thank both individuals for their work helping to improve the administration of justice in Texas through education.



LETTER TO THE EDITOR

August 20, 2002

Dear Hope Lochridge and W. Clay Abbott:

W. Clay Abbott informed us in the July 2002 issue of the *Municipal Court Recorder* of a Public Admonition, which the Commission on Judicial Conduct imposed upon a Texas Justice of the Peace for dozing in court. We have also recently heard of the reversal of a Texas death penalty case because the defendant's attorney slept through parts of the trial. As we all are aware, our behavior as judges and court personnel must be governed by a higher standard than that of the public in general. There is no question that dozing in the courtroom is inappropriate and unacceptable, for judges and court personnel alike.

However, the issue here has greater implications than just simply dozing off in a TMCEC seminar or during the Sunday morning sermon. The suggestion made by Mr. Abbott regarding paperclips and rubberbands may indeed have merit, *e.g.*, recall the Deacon or Elder in years past who sat in the back of the church and tapped nodders with a long pole. But, what must not be overlooked is the possibility that an underlying medical condition could be the cause of this undesired behavior. One such medical condition is "sleep apnea."

Sleep apnea is a common sleep disorder characterized by brief interruptions of breathing during sleep. These episodes may be few or many during a normal night's sleep period. When we think of sleep apnea, we typically picture an overweight male, over forty. How many of us at a TMCEC seminar fit this profile? But the fact is, sleep apnea affects both males and females of all ages and of ideal weight, although it is more likely to occur in men than in women. Today, more than 12 million Americans suffer from sleep apnea and it is estimated conservatively that ten million more are undiagnosed. The most common symptoms of sleep apnea are loud snoring and excessive daytime sleepiness, *e.g.*, falling asleep easily and sometimes inappropriately. Sound familiar? Most important, however, is that sleep apnea left untreated can be life threatening and the medical consequences may include high blood pressure and other cardiovascular complications.

What causes many people to seek treatment for sleep apnea is the "near miss" from falling asleep while driving. There is no question that falling asleep while driving accounts for a large percentage of fatal, non-alcohol related traffic accidents. While alcohol related driving has received a lot of attention, and rightfully so, we may not have thought of the consequences of sleep deprivation as having the same lethal potential. Or we may have thought of "snoring" as some natural consequence of maleness or aging or both, and that there was no real treatment. Fortunately, there are a variety of treatments now available for sleep apnea. Nasal continuous positive airway pressure (CPAP) is the most commonly treatment used today.

So, the recommendation for falling asleep inappropriately may involve more than us "older gentlemen taking more breaks." Given the demographics of the municipal court judges across the State and the known incidence of this disorder, there are probably many judges, and court personnel, that are candidates for dozing in court. If we are aware of the fact that we suffer from sleep apnea or, more than likely, have been told or elbowed by a spouse that we have kept awake, then we need to see our physician immediately—particularly if we suffer from high blood pressure. Keep in mind that, while a Commission sanction may seem like a "fate worse than death," the fate of an untreated sleep apnea patient can truly be life threatening.

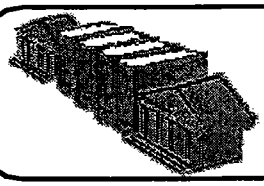
Nothing herein should imply that having a medical condition should excuse sleeping in court. The purpose of this communication is to hopefully encourage judges and court personnel who may have such a condition to seek appropriate treatment.

Respectfully submitted,

Henry A. Baldwin, Judge
Municipal Courts of Venus and Cross Timber

My thanks to Judge Baldwin for his timely and insightful comments. As a past apnea sufferer, I join him in recommending you seek treatment if similarly affected.

W. Clay Abbott
General Counsel, TMCEC



RESOURCES FOR YOUR COURT

Annual Texas Teen Court Conference and Spotlight Award

College Station will host the Annual Conference for the Texas Teen Court Association (TTCA) on November 5-8, 2002 at the Hilton and Conference Center. A number of interesting courses will be offered at the conference, as well as an optional tour of the George Bush Presidential Library. A limited number of scholarships are available. For more information, contact Peggy Calliham, Community Program Coordinator, City of College Station, P.O. Box 9960, College Station, Texas 77842 (409/764-3499 or pcalliham@ci.college-station.tx.us).

TTCA will award the *Spotlight Award* to the teen court that has shown the most progress, innovation, or achievement. To apply for the award, please answer the following questions and submit your registration to Peggy Calliham no later than October 1:

1. Describe how your court functions and include such items as your annual caseload, sentence completion rate, and methods used to dispose of cases.
2. Describe what you consider to be unique about your court and why.
3. Describe the involvement and support of other agencies and organizations within the community.
4. What achievement of your court in the past 12 months do you feel should be spotlighted and why?

Responses to these questions may not exceed three typewritten pages. A committee from the TTCA will review applications. Announcement of the winner will take place at the Awards Banquet on Thursday night.

Teen Court Starter Book

The TTCA web site contains a starter book on how to create a teen court. It may be downloaded for free at http://www.texasteencourt.com. It is estimated that there are at least 57 teen courts currently operating in Texas. The TTCA web site, annual conference, and networking with members are excellent first steps in starting a teen court.

NJC Scholarships

The National Judicial College (NJC) has scholarship assistance available for full and part-time judges wishing to attend NJC programs. The programs are typically held in Reno, Nevada, unless otherwise indicated. Please call Nancy Copfer at NJC at 800/255-8343 if you are interested in attending any of the following courses in 2002:

October 28-29	*Ethics for Judges*
October 28-November 1	*Judicial Writing*
October 30-31	*Building a Bias Free Environment in Your Court*
November 3-8	*Conducting the Trial* (San Diego, CA)
November 4-8	*Basic Evidence*
November 17-22	*Advanced Evidence* (Charleston, SC)
November 17-22	*Search, Seizure and Criminal Procedure* (Charleston, SC)

NJC is also taking applications and has scholarship assistance available for the following courses in 2003:

March 3-7	*Management Skills for the Presiding Judge*
March 5-7	*How to Be a Change Agent: Problem Solving Courts*
March 16-21	*Fundamentals of Evidence* (Chicago, IL)
March 23-28	*Logic and Opinion Writing* (Seattle, WA)
April 7-10	*Practical Approaches to Substance Abuse Issues*
April 28-May 8	*Special Court Jurisdiction*
April 28-May 8	*Special Court Jurisdiction-Advanced*

Individual scholarship applications will be reviewed by the NJC scholarship committee and awarded on a first-come, first-serve basis.

Snap Shot continued from page 1

cases per year. On the opposite end of the spectrum, a "mega volume" court processes over 250,000 cases the same year. In FY 2001, more than 7,443,400 cases were filed in Texas municipal courts. Of these filings, 3,244,062 were filed in eight courts alone (Houston, Dallas, San Antonio, El Paso, Austin, Fort Worth, Arlington, and Corpus Christi). These courts account for a whopping 47 percent of all municipal court filings.[1] An interesting contrast to this fact is that "low volume" courts constitute a significant 49 percent of all Texas municipal courts. The decorum survey suggests, not surprisingly, that smaller caseloads exist in smaller towns that presumably have fewer court resources. Comparing various forms of formality (courtroom, robe, and bailiff's announcement), there appears in the aggregate to be a direct correlation between court volume and formality.

Fig. 1: Texas Municipal Courts by Volume of Cases

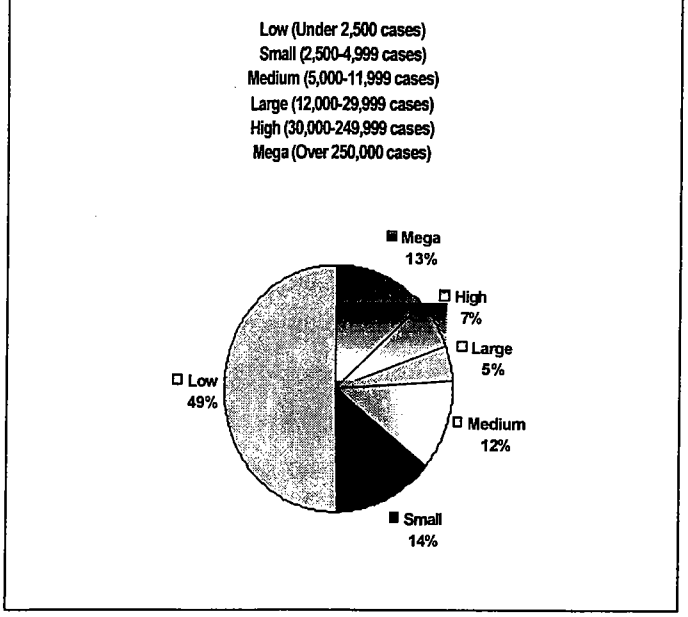
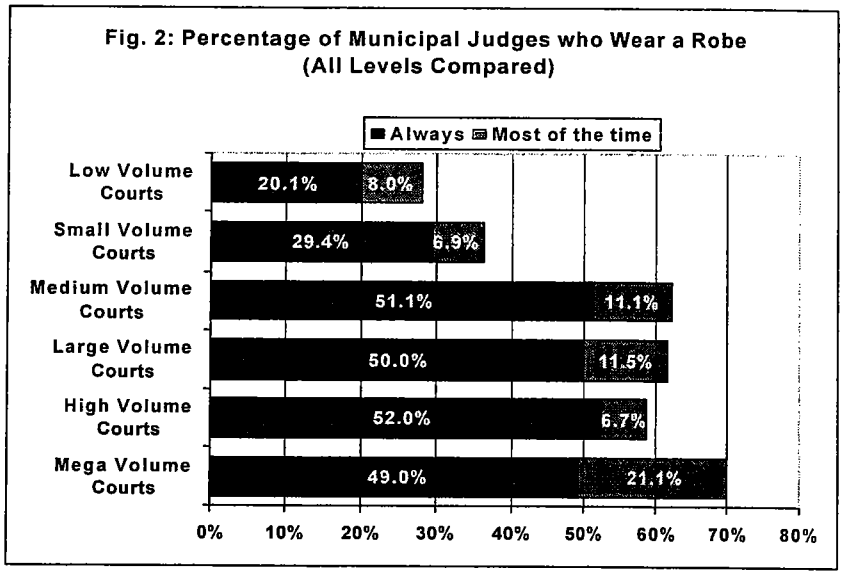


Fig. 2: Percentage of Municipal Judges who Wear a Robe (All Levels Compared)



B. Attitudes Towards Wearing Robes

Over 40 percent of municipal judges surveyed report never wearing a robe during court proceedings. As illustrated in Figure 2, the vast majority of such respondents are judges in low and small volume courts. A judge's robe is certainly one of the most important symbols generally associated with the judiciary. Proponents claim that psychologically a robe is the most important tool a judge can utilize. Simply stated, a robe distinguishes the judge from all other parties involved. It symbolizes authority and consequently commands the kind of respect essential for maintaining court decorum and compelling compliance with court orders.

Yet if the general consensus is that robes are so important, why don't more low and small volume municipal judges wear them? The reasons offered may surprise you.

Nearly 40 percent of low-volume judges surveyed report a simple yet neutral explanation: they simply do not own one. Notably, nearly seven percent of respondents either want one or are planning to get one. Other common responses included "never thought about it," "no good excuse," and "no good reason."

Slightly more than 27 percent believe that wearing a robe would have a negative impact on their ability to perform their judicial duties. Judges commonly responded that, in light of local standards, dawning a robe would be viewed as overboard. ("No judge in our county wears a robe.") Other judges feared that it would have a stifling effect. ("People are uncomfortable when they come to court and are already intimidated. The robe, in my opinion, increases apprehension and intimidation." Or, "I want court to be a friendly, positive experience.") Similarly, some judges responded that they do not wear a robe because it helps put *pro se* defendants at ease. Consequently, they are better able to express themselves. Finally, a considerable number of judges responded they believe that wearing a suit and tie suffices.

Disturbingly, nearly 17 percent of low volume judges responded that they do

not wear a robe because of a lack of resources, support, or official discouragement. Many judges replied that their cities do not provide enough funding for them to even consider purchasing a robe. Similarly, nearly four percent replied that they would feel awkward wearing a robe since they did not have a courtroom. Inadequate funding for the most basic judicial accoutrements suggests wanton, gross neglect on the part of many Texas smaller cities. Such inadequate support potentially fosters an environment in which judges feel trivialized, if not marginalized, by the attitude and actions of city officials. ("Our city and PD officers think [wearing a robe] is silly [and] that we are not 'real judges'."] Without remedial efforts, such municipalities contribute to an environment of informality that perpetuates and breeds disrespectful attitudes towards all municipal courts and the judicial system.

TMCEC hopes that the results of this survey will spark discussion among judges and city officials throughout Texas. For the most part, the survey substantiates long held assumptions about municipal courts in Texas. To this end, the data is of importance. Clearly, when discussing municipal courts, the survey underscores the importance of avoiding generalizations. Nevertheless, some of the data leads to conclusions that transcend generalizations. Most notably, a considerable number of Texas cities have opted to activate their municipal court but fail to provide adequate resources. Additionally, the survey suggests that a number of municipalities continue to operate their court in violation of the law by not requiring prosecutors to be present for trial. Presumably, such cities fail to appreciate the social and legal consequences of their neglect. As discussed throughout this issue, court decorum is an issue of importance in municipal court. As discussed elsewhere in this issue (see *Finding Balance*), municipal courts have long struggled with how much formalism is too much formalism. In low volume courts, there appears to be an especially greater amount of informality and a lack of decorum. This may be due to a combination of local inherent barriers (local attitudes, low expectations, etc.) as well as a lack of awareness on the part of the judge and other local officials.
(Note: For additional survey data regarding the number of municipal courts with posted rules of decorum and the number of courts in which the bailiff calls court to session see Figure 6 and Figure 7 on page 12).

II. Profiles

A. Occupational Profile of Municipal Judges

Who are municipal judges, how much time do they spend judging, and how are they compensated?[2] The survey suggests that 49 percent of all municipal judges are now attorneys. This estimate is consistent with Office of Court Administration data that over the last 10 years has shown a gradual

TABLE A: Profile of Municipal Judges

Numbers reflect percentages

(See Figure 1 for definitions of court sizes)

		LOW	SMALL	MEDIUM	LARGE	HIGH	MEGA
Are you an attorney?	**Percentage answering "yes"**	21	44	80	94	96	100
How much time do you spend working as a judge?	**More than 40 hours a week**	4.8	8.8	5.2	5.8	18.7	14.3
	Full-time-40 hours a week	6.5	8.8	8.9	5.8	13.3	23.1
	20-39 hours a week	13.1	18.8	11.1	25.0	12.0	2.0
	10-19 hours a week	16.1	15.6	23.0	11.5	14.7	15.0
	5-9 hours a week	15.6	18.8	11.1	15.4	12.0	19.0
	10-19 hours a month	11.1	11.3	12.6	9.6	9.3	17.0
	5-9 hours a month	13.8	6.9	12.6	9.6	8.0	6.1
	Less than 5 hours a month	13.1	0.0	11.9	11.5	5.3	0.7
Which phrase best describes the relationship between you and your city?	**On salary**	56.6	50.0	43.7	36.5	44.0	67.3
	On contract	20.8	35.0	47.4	55.8	49.3	27.9
	Work as volunteer	14.6	8.1	5.2	5.8	0.0	0.7
	Registration fees	54.5	61.3	51.9	55.8	77.3	64.6
	Paid leave time	33.9	38.1	24.4	34.6	46.7	42.9
	Law books and resource materials	48.2	42.5	0.0	38.5	46.7	38.1
	Email or internet access	16.1	25.6	24.4	26.9	33.3	25.2
	None	10.1	9.4	17.0	15.4	8.0	9.5

TABLE B: Profile of Local Financial Support

Numbers reflect percentages

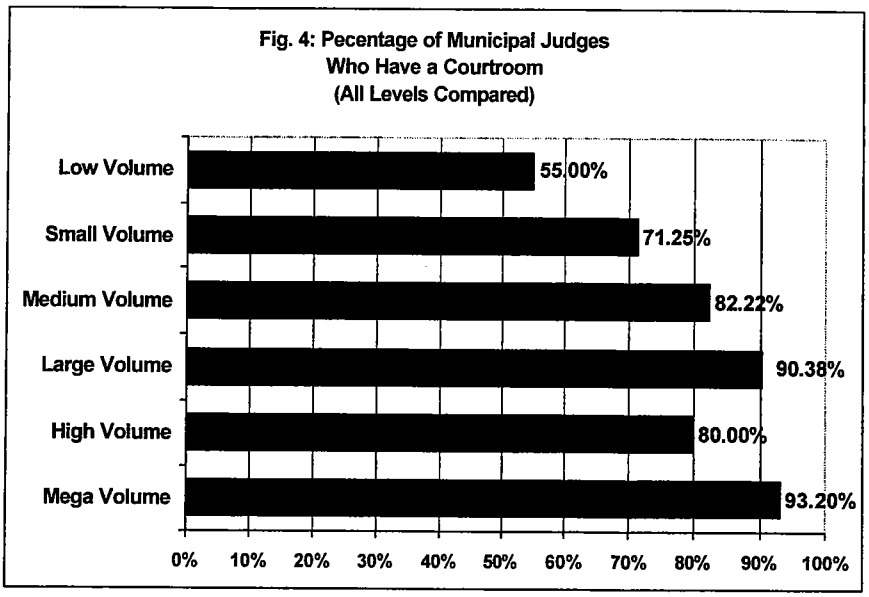
(See Figure 1 for definitions of court sizes)

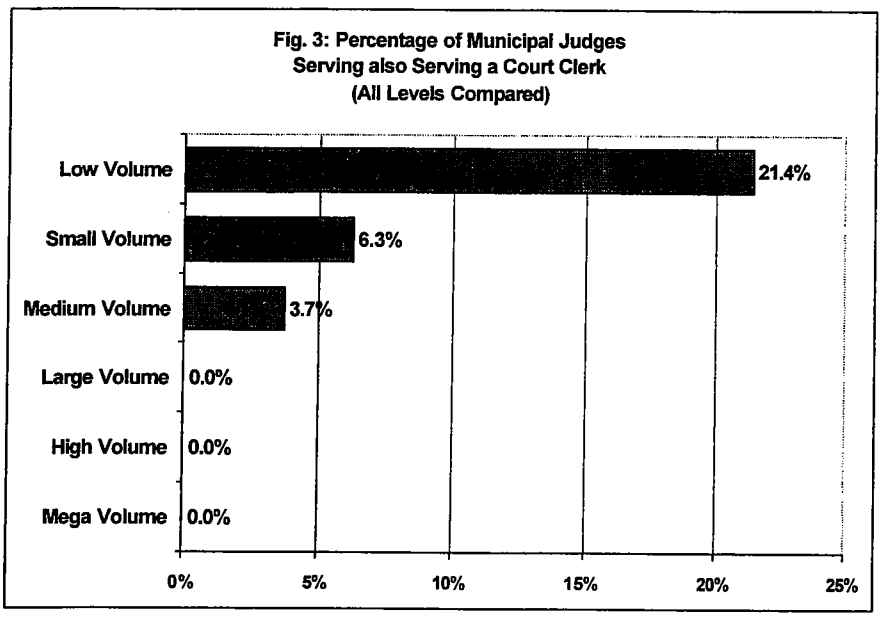
What financial support does your city offer you to support your continuing judicial education?	LOW	SMALL	MEDIUM	LARGE	HIGH	MEGA
Travel to seminar	77.9	76.9	68.1	75.0	80.0	59.2
Meals to and at seminar	71.8	66.3	55.6	65.4	73.3	47.6
Registration fees	54.5	61.3	51.9	55.8	77.3	64.6
Paid leave time	33.9	38.1	24.1	34.6	16.7	12.9
Law books and resource materials	48.2	42.5	0.0	38.5	46.7	38.1
Email or internet access	16.1	25.6	24.4	26.9	33.3	25.2
None	10.1	9.4	17.0	15.4	8.0	9.5
No	13.5	5.6	1.5	0.0	1.3	1.4

increase in the number of attorneys serving as municipal judges.[3] Of all judges surveyed, less than 16 percent reported being full-time municipal judges. The median range of hours worked by judges surveyed was an estimated 10-19 hours per week. Of all judges responding to the survey, nearly 54 percent reported earning a fixed, regular salary; 30 percent reported being compensated on a contractual basis; while nearly 10 percent of all judges reported volunteering to serve as municipal judge without compensation.

B. Financial Support Given by Cities

Another objective of the decorum survey was to gain a better sense of how much financial support municipalities provide that assist judges to do their job better. The survey suggests that a considerable number of Texas cities are neglecting to provide adequate financial support for their municipal court's technological infrastructure and for



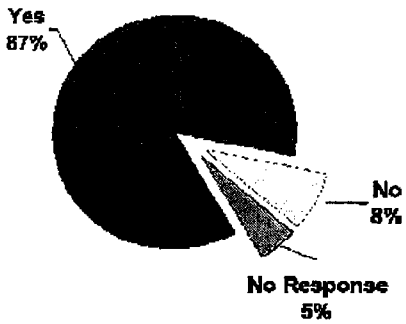


continuing judicial education. While over half of the judges surveyed reported that their cities provide funds relating to registration fees, meals, and travel, 11 percent reported receiving no financial support for continuing judicial education. Nearly 66 percent surveyed reported that their cities do not provide them with law books or resource materials, and 89 percent reported not being provided e-mail or Internet access.

C. Wearing Two Hats: Judges Acting as Clerk

Statewide, 12 percent of municipal judges report they act as their own clerk. The survey suggests that this potentially problematic practice occurs

Fig. 5: Do You Have a Prosecutor? (All Levels)



exclusively in low, small, and medium volume municipal courts (see Figure 3). In light of the relatively limited volume of cases processed by such courts, the practice of "wearing two hats" makes sense from a fiscal perspective. However, a judge acting as a clerk poses significant ethical problems. Clerks help shield judges from *ex parte* communications. Judges acting as court clerks may not be insulated from such communications. Absent are considerable measures to prevent and remedy such communications, and such judges expose themselves personally to disciplinary action by the State Commission on Judicial Conduct. Similarly, municipalities and city officials subsequently share the negative publicity related to such disciplinary actions.

D. Courtroom Facilities

Statewide, 69 percent of judges surveyed reported having a courtroom. The 26 percent reporting having no courtroom were asked where they conducted court proceedings (*e.g.*, take pleas, conduct pre-trial hearings and trials). The vast majority of respondents replied that they conduct such proceedings in city council chambers. The use of city council chambers is a good solution in that council chambers and courtrooms frequently have similar décor and have a sitting area open to the public. A number of cities have made arrangements to use county court facilities. Other judges responded that they hold court in a variety of locations including community buildings, public libraries, and fire stations. While the interior sufficiency of such facilities may vary, one important feature that they share is that they are all open to the public. A handful of judges responded that they hold court in offices and conference rooms. Such rooms may only be used for court functions if they are open and accessible to the public. Legally speaking, courts are better off holding court outdoors, rather than holding court in any interior facility that is debatably inaccessible to the public.

E. Prosecutors

While prosecutors are not required to be present when defendants initially appear to enter a plea, Article 45.201 of the Code of Criminal Procedure specifically requires that designated attorneys be present to conduct "prosecutions" at both bench and jury trials.[4] Such prosecutions are to be conducted by the city attorney of the municipality or by a deputy city attorney.[5] The survey suggests that more that 48 percent of courts are provided prosecutorial services through the office of the city attorney, while nearly 34 percent utilize either a private law firm or practitioner. Nearly three percent of judges reported that the county attorney conducts prosecutions.

While such data provides a better profile of municipal prosecutors, it also raises the possibility that some municipal courts are operating in violation of the law. Despite the clear language of the Code of Criminal Procedure requiring prosecutors at trial, eight percent of municipal judges report having no prosecutor. If this figure is accurate, it is indicative of a very significant legal problem within a handful of Texas municipalities.

Chapter 45 of the Code of Criminal Procedure makes no distinction between the largest and smallest municipal courts. Just as all municipal courts are required to have judges, they are also required to have prosecutors at trial. Barring specific language in either the city charter, resolution, ordinance, or contract, a solo practitioner or law firm serving as city attorney has a legal duty to prosecute

Snap Shot continued on page 11

TABLE C: Profile of Municipal Prosecutors

Numbers reflect percentages

(See Figure 1 for definitions)

		LOW	SMALL	MEDIUM	LARGE	HIGH	MEGA
Do you have a municipal prosecutor?	**Yes**	82.2	88.8	94.1	94.2	86.7	93.2
	No	13.5	5.6	1.5	0.0	1.3	1.4
Which of the following best describes who prosecutes in your court?	**City attorney's office**	39.2	35.6	39.3	57.7	78.7	88.4
	County attorney's office	4.3	1.9	0.0	0.0	1.3	0.0
	Private law firm or practitioner	35.5	48.8	55.6	32.7	5.3	2.7
	An attorney pro tem as needed	4.3	1.9	0.0	0.0	0.0	0.0

Balance continued from page 1

Despite relaxed social norms for behavior and general de-emphasis on formality throughout society, the U.S. Supreme Court has consistently emphasized that protecting the dignity of the courts and preserving public perception require all judges to remain vigilant in maintaining court decorum.[4] Preservation efforts begin in municipal court.

Ethically, all Texas judges are required to "maintain order and decorum in proceedings before the court."[5] All Texas courts are legally required to conduct proceedings with dignity and in an orderly and expeditious manner, assuring that justice is done.[6] In complying with the objectives of the Code of Criminal Procedure, municipal and justice courts are specifically required to "ensure appropriate dignity in court procedure without undue formalism."[7]

While the Code of Judicial Conduct describes what is generally required of Texas judges, the Code of Criminal Procedure's requirement for municipal judges is more nebulous. What is "appropriate dignity in court procedure"? What constitutes "undue formalism"? The law provides little guidance. Consequently, the task of finding a balance between "appropriate dignity" and "undue formalism" belongs to each municipal judge.

Have most municipal judges considered, yet alone achieved, such a balance? In recent years, Texas municipal courts have been criticized for the informality of their proceedings (*e.g.*, judges seldom wear robes, patrons do not have to rise when the judge enters the room, bailiffs participate in the taking of pleas).[8] While such criticisms are often presumed to describe courts in smaller municipalities (who have fewer resources), metropolitan municipal courts are not immune from such criticism.[9]

There are sufficient reasons to believe that efforts are necessary to improve perception of municipal courts.[10] Institutional research conducted by the Texas Municipal Courts Education Center suggests that municipal judges neglect court decorum for a variety of reasons. The most common reason for lax court decorum is a general failure to appreciate its importance. Other reasons include a lack of resources, lack of official support, and official discouragement.

Court decorum is not about the vanity of the individual judge or sovereign authority. Rather, court decorum is a utility that creates an optimal climate for the administration of justice. Beginning with the judge, changes in municipal courts begin at home. Thus, not only must municipal judges be aware of the importance of court decorum, city officials must also appreciate its importance as a vital component in the administration of justice. The appearance of a citizen before a municipal court is a rare opportunity for the citizen to gain insight into the quality of city government and its elected or appointed leaders. Accordingly, ensuring positive public perception requires each city to implement necessary changes in its municipal court. Many municipal judges inherit chambers and courtrooms that leave much to be desired, while 26 percent of municipal judges inherit no courtroom at all.[11]

While some issues, such as posting and enforcing rules of decorum, can be implemented by the judge alone, the administration of justice necessitates a commitment from city council, city managers, and mayors. While cities should budget adequate funds for municipal court operations, city councils dedicated to improving their municipal courts are statutorily authorized to ear-mark 10 percent of time payment revenue for the specific purpose of insuring the efficient administration of justice.[12] The law specifically requires municipalities to prioritize the needs of the municipal judge who collected the fee in making such expenditures.

In assessing how a courtroom or other facility serving as a courtroom functions, consider the following criteria:[13]

1. **Function and Organization** – In addition to a judge's bench, at a minimum, courtroom facilities should be of adequate size to accommodate a jury box (a designated area capable of seating six jury panel members), a witness stand (a designated seat for witnesses when called to testify), designated places for court personnel (court clerk and/or court reporter, bailiff), a gallery (all Texas courts and trial proceeding are required to be open to the public), and designated places for the prosecution and defendant (separate tables facing the bench for both the defendant and prosecutor). Ideally, a courtroom also contains a jury room (a room separate from the court that can be used during jury deliberation and recess). In laying out a courtroom, municipalities should be mindful that all courts are required under federal and state law to be accessible to people with disabilities.
2. **Symbolic Values** – The interior of a municipal courtroom should reflect the cultural and social values of the city, state, and nation. The fixtures of the courtroom should announce to all who enter it the importance of the administration of justice. The room should be organized to psychologically differentiate it from other governmental workspaces. This can be achieved through the prominent display of the seals of the city and state and the display of the state and national flags. The gavel and

the robe are the two symbols most frequently associated with the courts. Despite the importance of such symbols, a survey conducted by the Texas Municipal Courts Education Center concluded that only 58 percent of municipal judges wear robes. Judges who do not wear robes ignore research that concludes that the robe is an important symbol of judicial authority that evidences the judge's commitment to impartiality. Additionally, the robe establishes the formality of the court and gives the court credibility (*i.e.*, if you don't dress like a judge you are less likely to be treated like a judge). Finally, in rural courts where the judge may be known as a friend or neighbor, the robe eliminates the familiarity that potentially hinders the administration of justice.[14]

3. **Environmental Factors** – A well functioning courtroom should also meet more pragmatic criteria. Facilities should have adequate lighting, air-conditioning, and heating. Additionally, to ensure that all people present can hear the proceeding, the court should be equipped with audio amplification equipment.
4. **Construction, Materials, and Furnishings** – The quality of construction and décor directly affect the durability of a courtroom. From a management perspective, the appearance of the courtroom directly impacts morale. Simply stated, quality environments encourage quality performance.[15]
5. **Security** – Because violent outbursts are occurring more frequently in the courtroom, judges and city officials should take appropriate measures to protect both court personnel and members of the public. Depending on the volume of cases adjudicated by the court, expenditures pertaining to court security can be supplemented (or altogether covered) by adoption of an ordinance creating a municipal court building security fund.[16] The statute governing the security fund contains a detailed list of physical items and services that may be purchased to improve court security. Most municipalities have opted to create the municipal court building security fund because defendants, rather than taxpayers, bear the additional court cost. Expenditures alone do not, however, ensure security. Protecting patrons and avoiding civil liability require municipalities to develop, implement, and monitor security plans. Related consulting costs can also be offset by municipal court building security fund revenue.

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[1] *Brown v. Walter*, 62 F.2d 798, 800 (1933).
[2] *Illinois v. Allen*, 397 U.S. 337, 351 (1970) (Douglas, J., dissenting).
[3] *Mayberry v. Pennsylvania*, 400 U.S. 455, 456 (1971).
[4] See, *J.E.B. v. Alabama ex rel. T.B.*, 114 S. Ct. 1419, 1438 n.3 (1994) (Scalia, J., dissenting) (asserting that appearance of justice is equally important as actual justice); *Illinois v. Allen*, 397 U.S. 337, 343 (1970) (declaring that dignity, order, and decorum are necessary for success of criminal justice system).
[5] Texas Code of Judicial Conduct, Canon 3(B)(3).
[6] Section 21.001(b), Government Code.
[7] Article 45.001(3), Code of Criminal Procedure.
[8] Horton & Turner, *Lone Star Justice: A Comprehensive Overview of the Texas Criminal Justice System*, Austin: Eakin Press (1999) at 166.
[9] Cities with large dockets have been described as distributors of "assembly-line justice." Scholars studying such courts conclude that emphasizing the number of cases processed potentially sacrifices procedural and substantive rights, as well as court decorum. Critics have gone as far as describing such municipal courts as "hurricanes of humanity" where the "process is the punishment." See generally, David W. Neubauer, *America's Courts and the Criminal Justice System 6th Edition* (West 1999) at 470-475.
[10] *The Courts and the Legal Profession in Texas – The Insider's Perspective: A Survey of Judge, Court Personnel, and Attorneys*, Alexandria, Virginia: State Justice Institute (1998) (suggesting that municipal courts rank last in overall impression among judge and court personnel and second to last among lawyers).
[11] See generally, TMCEC *Municipal Court Recorder* Vol. 11, No. 9 (Summer 2002).
[12] Section 51.921(d), Government Code.
[13] National Conference of State Trial Judges, *The Judge's Book*, Chicago: American Bar Association (1989) at 10.
[14] Felix F. Stumpf, *Bench Trial Skills and Demeanor: An Interactive Manual For New Nonlawyer Judges*, Reno, Nevada: The National Judicial College (1995).
[15] See generally, Burns, *Designing the Good Courtroom*, Popular Government (Fall 1984).
[16] Article 102.017, Code of Criminal Procedure.

Snap Shot continued from page 9

in municipal court. Too frequently municipalities pay retainers and lawyers' fees, yet fail to receive the full benefit of having a city attorney. City attorneys who ignore, deny, or otherwise attempt to avoid such responsibility may be subject to contempt, professional disciplinary action, and/or sued for malpractice.

Similarly, the State Commission on Judicial Conduct may discipline judges who proceed to trial without a prosecutor. It is ultimately, the judge's responsibility to ensure that a prosecutor is present to represent the State at trial. In the event a prosecutor is not present for trial, the law provides the judge three options:[6]

- Postpone the trial to a date certain;
- Appoint an attorney *pro tem* as provided in Article 2.07 of the Code of Criminal Procedure (Used in conjunction with the postponement option, the appointment of an attorney *pro tem*

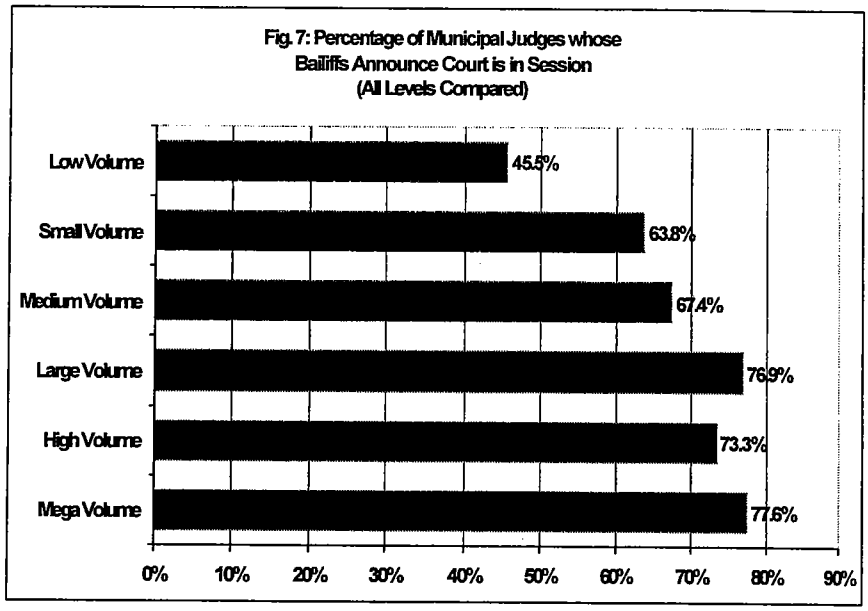
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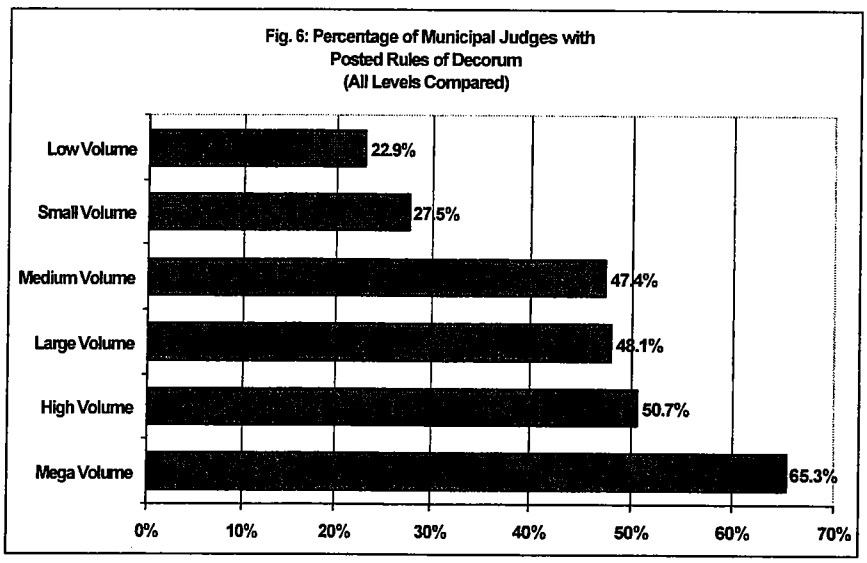
An Introduction to Model Rules of Court Decorum

By Ryan Kellus Turner, TMCEC Program Attorney & Deputy Counsel

In the same vein that criminal laws are necessary to govern the conduct of members of society, rules of decorum are necessary to govern the conduct of court participants. Most county and district courts adopt local rules of practice. Such local rules govern the practice of lawyers and citizens who come before the court. Frequently, such local rules contain rules of decorum.

The following Model Rules of Court Decorum are derived from various local rules in place throughout the state. Even within jurisdictions that have adopted such rules, it is not unusual to see some variances in the manner in which they are applied. In this sense, there is no such thing as uniform rules of decorum. Nevertheless, the importance of trial courts adopting some compilation of rules deserves emphasis. While some judges may shun the promulgation of such rules for various ideological reasons, the bottom line is that such rules are essential managerial tools that assist the judge in fulfilling his or her duty. Statewide, nearly 59 percent of all municipal judges surveyed report that they do not have posted rules of decorum. (For a comparative analysis by volume of cases, see Figure 6 below). Fifty-eight percent do, however, have a bailiff that announces when court is in session. (For a comparative analysis by volume of cases, see Figure 7).





Often, a fine line divides the court from the judge. In the context of rules of decorum, it is necessary for judges to delineate between the two. Promulgating rules of decorum have little to do with the judge. Rather, such rules preserve respect for the time-honored process. By promulgating and enforcing such rules, each judge honors the history and importance of a truly American institution.

Because rules of decorum frequently address more than merely prohibited conduct by courtroom spectators, courts may want to consider various ways to inform patrons of such rules. Consider the following methods:

1. **Prominent Posting of Rules** (especially rules pertaining to courtroom conduct).
2. **Enclosures** – Distributing court rules of decorum with other court correspondence addressed to defendants, witnesses, and lawyers.

Model Rules continued on page 24

MODEL RULES OF COURT DECORUM

I. **COURTS WHERE APPLICABLE.** Under the inherent power and duty of all Texas courts as codified in Section 21.002, *Government Code*, the following Rules of Decorum shall apply and govern all proceedings before the Municipal Court of the City of _____ in the County of _____, Texas.

II. **FORMAL OPENING.** Each daily session of the Court shall be brought by announcement of the Bailiff, Clerk or other officer of the court requiring all to rise as the Judge takes the bench.

III. **CONDUCT REQUIRED OF ALL PERSONS WHILE ATTENDING COURT.** While the Court is in session there shall be:

A. No smoking or use of tobacco products.

B. No reading of newspapers or magazines.

C. No propping of feet or sitting on tables, chairs, benches, or railings.

D. No loud noises or talking.

E. No gum chewing.

F. No food or beverages.

G. No gestures, facial expressions, or sounds indicating approval or disapproval.

H. No inappropriate attire.

IV. **CONDUCT REQUIRED OF COUNSEL AND *PRO SE* DEFENDANTS**

A. Attorneys shall observe the letter and spirit of all canons of ethics, including those concerning improper *ex parte* communications with the Judge and with those dealing with discussion of cases with representatives of the media.

B. Attorneys shall advise their clients and witnesses of Rules of Decorum that may be applicable.

C. *Pro se* defendants (defendants acting as their own counsel) shall conform their behavior to all provisions applicable to Counsel.

D. Counsel shall be dressed appropriately while in attendance of the court, unless otherwise permitted by the Court.

E. All parties shall be prompt in arriving for Court and in attending to Court business.

F. Once a party has entered the courtroom and is appearing before the Court, he/she shall not leave without obtaining permission from the Court.

G. The State, or moving party, shall be seated at the counsel table or side of the counsel table nearer the jury box.

H. All remarks of counsel to the Court shall be addressed to the Court formally.

I. The Court and opposing parties shall address each other and members of the Jury without familiarity. The use of first names shall be avoided.

J. All objections, arguments, and other comments shall be directed to the Judge or Jury and not to opposing counsel.

K. Objection shall be in proper legal form. Argument will not be entertained upon an objection except with the Court's permission.

L. In addressing the Court, counsel shall rise and remain standing at their positions at counsel table.

M. Counsel shall remain seated at the counsel tables at all times except:

1. when the Judge enters and leaves;
2. when addressing the Judge or jury;
3. whenever it may be proper to handle documents, exhibits, or other evidence; and
4. when objecting to opposing counsel.

N. Counsel shall not approach the bench except with permission or on request of the Court.

O. Counsel shall not lean on the bench, sit on rails or tables, or appear to engage the Court in a confidential manner.

P. No attorney or party shall expect any Court attendant to request his or her presence prior

(over)

to the commencement or resumption of any Court proceedings

Q. The Court may enforce these rules of conduct and decorum by appropriate action or sanctions.

R. Nothing herein shall prevent or prohibit the further adoption of additional rules of decorum.

V. BAILIFFS.

A. The Bailiff or Bailiffs shall be present at all times when the Court is in session or in recess, unless excused by the Judge. No duty shall be assigned to the Bailiff without prior approval of the Judge.

B. The Bailiff shall see that the flag of the United States of America and the flag of the State of Texas are properly displayed and respected in the Courtroom.

C. The Bailiff shall enforce all rules of conduct and decorum and other duties assigned by the Judge.

VI. ENDORSEMENT. All attorneys practicing before the Court and *pro se* defendants (defendants acting as their own counsel) are required to conform their conduct to the above stated Rules of Decorum. The undersigned attests to his or her receipt of said Rules and acknowledges the expectation of the Court. The undersigned further acknowledges that violation of the Rules of Decorum may constitute Contempt of Court and may be punishable by a fine and/or confinement pursuant to Section 21.002(c), Government Code.

Printed Name: _____

Signature: _____

Date: _____

Bar Card No.: _____

NOTE: This endorsement must be returned to the clerk prior to any proceeding before the court.

For your editing convenience the text of the Model Rules of Decorum may be downloaded from our website (www.tmcec.com) as a Microsoft Word document.

Court Room Assessment Survey[1]

Use the following assessment survey for inspecting courtroom facilities, equipment, supplies, and other conveniences.

		Adequacy or Availability	
1.	Lighting	Yes_____	No_____
2.	Air-conditioning	Yes_____	No_____
3.	Heating	Yes_____	No_____
4.	Amplifying Equipment	Yes_____	No_____
5.	Bench	Yes_____	No_____
6.	Flags	Yes_____	No_____
7.	State Seal	Yes_____	No_____
8.	Nameplate for judge	Yes_____	No_____
9.	Paper, pen, pencils	Yes_____	No_____
10.	Water on bench and counsel tables	Yes_____	No_____
11.	Place for witnesses	Yes_____	No_____
12.	Place for court reporter (if applicable)	Yes_____	No_____
13.	Place for bailiff	Yes_____	No_____
14.	Place for court clerk	Yes_____	No_____
15.	Table for defendant & counsel	Yes_____	No_____
16.	Table for prosecutors	Yes_____	No_____
17.	Place for spectators	Yes_____	No_____
18.	Judges chambers	Yes_____	No_____
19.	Robe	Yes_____	No_____

[1] Felix F. Stumpf. *Bench Trial Skills and Demeanor*: The National Judicial College. Reno Nevada (1995) at 15-16. Used with permission.



FROM THE CENTER

Where to Get A Robe? A State Seal?

Looking for a judicial robe? Check your Yellow Pages for a local vendor. Try checking under *Choir Gown, Church Supplies* and *Religious Goods*. A local vendor is especially convenient for the judicial robe as measurements may be needed, and there are often quite a few choices in terms of material and style. TMCEC does maintain a list of robe companies, although TMCEC does not make any guarantees as to the quality of the robe or dependability of the company. Robes typically start at $125 and up.

TMCEC also has a list on where to purchase a Texas seal for display in your courtroom.

Concerning state seals, it is important to note that private use of the state seal, including the state arms and reverse of the state seal, is regulated by law. The state seal may be used for commercial purposes only if a license is obtained from the Secretary of State and royalties are paid to the state. Additionally, it is a criminal offense for a person other than a political officeholder to knowingly use a representation of the state seal in political advertising. Persons seeking more information on private use of the state seal should contact the Office of the Secretary of State (512/463-5770) or discuss the issue with their own attorney.

For information on purchasing robes or state seals, call or write TMCEC (1609 Shoal Creek Blvd., Suite 302, Austin, Texas 78701 (800/252-3718). Or, email us at tmcec@tmcec.com.

National Collections Symposium

In July 2002, a National Court Collections Symposium (NCCS) was held in Dallas. The NCCS program was highly rated by participants that included judges, clerks, and collections staff from the various levels of the judiciary. A second program is tentatively scheduled for October 23-25, 2002 in Orlando, Florida. Court personnel are asked to contact nccs@gowebo.com if someone in their organization is interested in attending so that the proper number of sleeping rooms and meeting room space can be reserved. For additional information, log on to www.courtcollections.org. Organizers for the program include Jim Lehman and Russ Duncan, who have both served on the TMCEC faculty.

ABA Traffic Court Technology Conference

The 2002 Traffic Court Technology Conference is planned for November 6-9, 2002 in Atlanta Georgia. It is sponsored by the National Conference of Specialized Court Judges of the American Bar Association. Topics include speed measurement devices, drug and alcohol pharmacology, pretest stops, photo speed, and red light enforcement. Tuition for the seminar is $225 for specialty court conference members and $275 for non-members. For additional information, contact, 800/238-2667 ext. 5742.

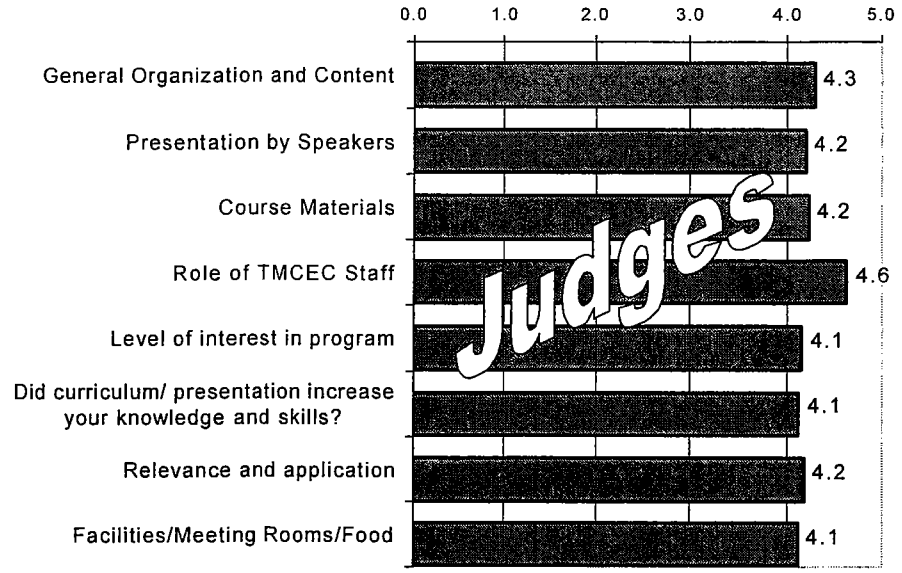
Looking Back on Last Year

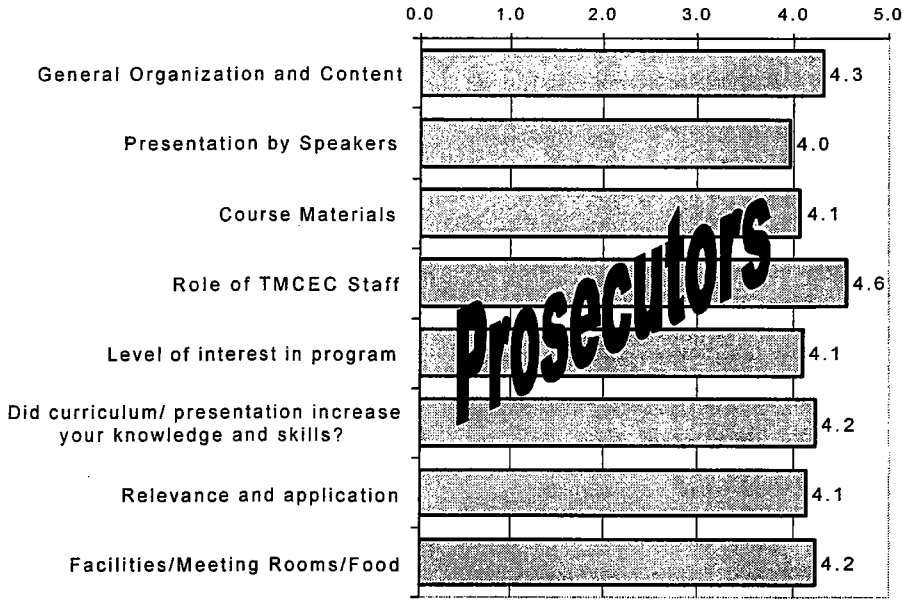
A review of the overall evaluations for last year indicates that the Center's programs were well received by the TMCEC constituency.

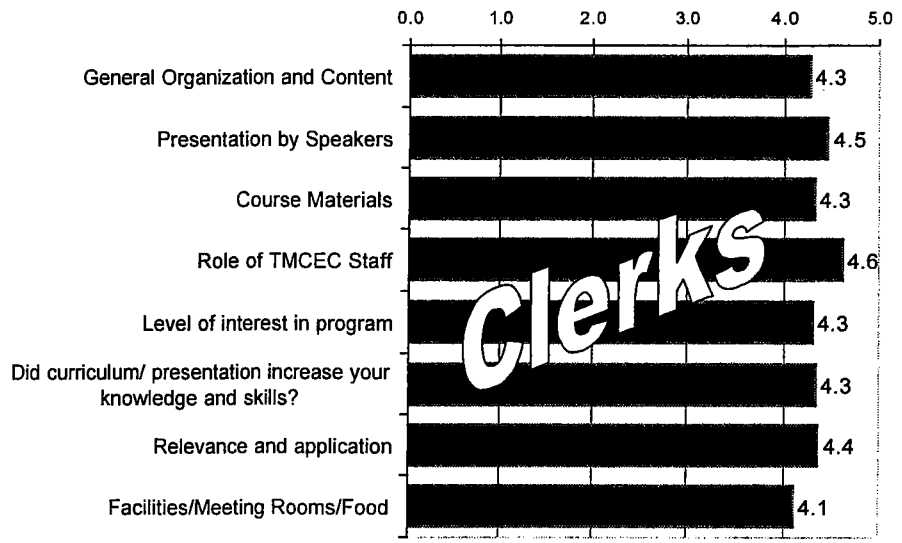
TMCEC is always looking for ways to improve its program. If you have questions, comments or suggestions, do not hesitate to call Hope Lochridge, TMCEC Executive Director (800/252-3718).

TMCEC wishes to thank the many faculty members who participated in its FY 2002 program this past year.

Mr. W. Clay Abbott, General Counsel, TMCEC, Austin
Mr. Michael Acuña, Assistant City Attorney, City of Dallas
Mr. Brad Alford, Assistant Collections Administrator, Kerr Collections – Kerr County, Kerrville
Mr. Robert Anchondo, Attorney and Counselor at Law, El Paso
Mr. Reggie Andrews, Administrative Technician IV Driver Records Bureau, Department of Public Safety, Austin
Mr. James S. Angelino, Assistant District Attorney, Denton County
Ms. Betty Arvin, Assistant Criminal District







Attorney, Tarrant County, Fort Worth
Dr. Suzette Ashworth, Consultant, Austin
The Honorable Robert J. Barfield, Municipal Judge, City of Pasadena
Ms. Jo Dale Bearden, Program Coordinator, TMCEC, Austin
Mr. Gregory Beaves, City Marshal, City of Jersey Village, Jersey Village
Mr. James D. Bethke, Director, Task Force on Indigent Defense, Office of Court Administration, Austin
Ms. Nancy Bischoff, Director – Revenue and Recovery, San Joaquin County, Stockton, CA
Ms. Donna Bloom, Executive Director, Women's Center of East Texas, Longview
Mr. Tom Broussard, Commission Counsel, Commission on Judicial Conduct, Austin
The Honorable John Bull, Presiding Judge, City of San Antonio
The Honorable Deanna Burnett, Municipal Judge, City of Carrollton
Ms. Rosie Caballero, President – Texas Court Clerks Association, Court Administrator – Coppell
Ms. Debbie Carter, Public Policy Coordinator, Texas Council on Family Violence, Austin
Ms. Candace Chappell, Assistant City Attorney, City of Irving
Ms. Kay Christopher, Consultant, Christopher Communications, Los Alamos, NM
The Honorable Martin Cirkiel, Municipal Judge, City of Hutto
Mr. Ron Cornelius, City Marshal, City of Richland Hills
Ms. Connie Crenshaw, CMCC, Court Clerk, City of Luling
Dr. Jennifer Cutrer, Consultant, Dallas
The Honorable Jay Daniel, Municipal Judge, City of San Angelo
Mr. John Danner, Assistant City Attorney, City of San Antonio
The Honorable Robert Doty, Municipal Judge, City of Lubbock
Mr. Steve Drake, Government Information Analyst, State & Local Records Management Division, State Library and Archives Commission, Austin
Mr. Russ Duncan, Collections Coordinator – Kerr Collections, Kerr County, Kerrville
The Honorable Gary Ellsworth, Presiding Judge, City of Spearman
Mr. Ross Fischer, County Attorney, Kendall County, Boerne
The Honorable Linda Frank, Municipal Judge, Plano & Chief Municipal Court Prosecutor, Arlington
Ms. Cheryl Garren, Administrative Tech III Driver's License Division, Department of Public Safety, Austin
The Honorable Allen Gilbert, Municipal Judge, City of San Angelo
Ms. Hope Ging, Administrative Tech II Driver's License Division, Department of Public Safety, Austin
Ms. Tracie Glaeser, Court Administrator, City of Round Rock

Mr. Larry Glick, Administrative Technician II License Issuance Bureau, Department of Public Safety, Austin

Ms. Bonnie Goldstein, City Prosecutor, City of McKinney, Dallas

Ms. Frances Gomez, Administrative Technician II Driver Improvement Bureau, Department of Public Safety, Austin

Mr. Michael L. Graham, Municipal Prosecutor, City of Bryan

Ms. Cynthia Gray, Director, Center for Judicial Ethics American Judicature Society, Chicago, IL

Mr. Wesley Green, Administrative Technician II, Driver Records Bureau, Austin

Mr. Rey Guzman, Multimedia Specialist, TMCEC, Austin

Ms. Jacqueline Habersham, Commission Counsel, Commission on Judicial Conduct, Austin

Mr. Randall Hansen, Judicial Planning Department – Texas Judicial Council, Office of Court Administration, Austin

Mr. Rene Henry, Collections Project Manager, Research & Court Services Section, Office of Court Administration, Austin

The Honorable Vonciel Jones Hill, Municipal Judge, City of Dallas

The Honorable Brian S. Holman, Presiding Judge, City of Lewisville

The Honorable William Hughes, Municipal Judge, City of Canyon

Ms. Annette Jones, Assistant City Attorney, City of Waco

The Honorable Karrie Key, Municipal Judge, City of Austin

Ms. Ann H. Kloeckner, Training Specialist, TDCJ Victim Services Division, Austin

Ms. Melissa Kreer, Administrative Technician IV Driver Records Bureau, Department of Public Safety, Austin

The Honorable Robert Kubena, Municipal Judge, City of Hallettsville

The Honorable M. Sue Kurita, County Court at Law No. 6, El Paso

Ms. Mercedes Kutcher, Commission Counsel, Commission on Judicial Conduct, Austin

The Honorable C. Victor Lander, Municipal Judge, City of Dallas

Mr. Mitch Landry, Program Coordinator, Texas Municipal Police Association, Austin

The Honorable Tom Lawrence, Justice of the Peace, Humble

Mr. James Lehman, Collections Specialist, Office of Court Administration, Austin

The Honorable Andrew Leonie, Municipal Judge, City of Lavon, Dallas

Dr. Richard Lewis, President, Round Top Consulting Associates, San Antonio

The Honorable Janet Littlejohn, State District Judge, 150th District Court, San Antonio

Ms. Hope Lochridge, Executive Director, TMCEC, Austin

The Honorable Kevin Madison, Municipal Judge, Citiy of Lakeway, and Villages of Bee Caves and Briarcliff

Mr. Scott Mann, Member, Commission on Judicial Conduct, Lubbock

The Honorable Jan Blacklock Matthews, Municipal Judge, City of Lubbock

The Honorable Lamar McCorkle, 133rd District Court, State District Judge, Houston

Ms. Amy Messer, Assistant City Attorney, City of Dallas

Mr. Jeff Moore, Assistant Attorney General, Attorney General's Office, Austin

Mr. David Mudd, Director of Reporting Services, Office of Court Administration, Austin

Mr. Mark Muellerweiss, Senior Assistant City Attorney, City of Houston

Ms. Colleen Munds, Government Records Consultant, Texas State Library, Austin

Mr. Craig Nielson, Senior Revenue Recovery Consultant, Revenue Plus, Vancouver, WA

The Honorable Ana Otero, Municipal Judge, City of Houston

Mr. T.J. Patterson, Assistant City Attorney, City of Fort Worth

The Honorable Richard Patteson, Presiding Judge, City of Tyler

Mr. Kent Pfeil, Assistant Director of Finance, City of Richardson

The Honorable Joe Pirtle, Presiding Municipal Judge, City of Seabrook

Mr. David Preciado, Court Manager, City of San Antonio

The Honorable Edwin L. Presley, Municipal Judge, City of Benbrook

Ms. Elizabeth Price, Publications Coordinator, TMCEC, Austin

The Honorable Robin Ramsay, Presiding Judge, City of Denton

Ms. Jodie Reaver, Advocacy Specialist, Texas Council on Family Violence, Austin

Ms. Margaret Reaves, Executive Director, Commission on Judicial Conduct, Austin

The Honorable Thomas Redwine, Presiding Judge, City of Van Alstyne

The Honorable Larry Reed, Municipal Judge, City of Fort Worth

Ms. Susan Richmond, Chief Marshal, City of Carrollton

The Honorable Robert Richter, Municipal Judge, City of Missouri City

Ms. Margaret Robbins, Program Director, TMCEC, Austin

The Honorable Allen Ross, Municipal Judge, City of Tyler

Ms. Patricia Russo, Program Assistant II/Network Administrator, TMCEC, Austin

Ms. Kim Scofield, Government Records Consultant, State & Local Records Management Division, State Library and Archives Commission, Austin

Ms. Jan Seeley, Collections Supervisor Department of Finance, City of Chula Vista, California

Mr. John L. Shergold, Assistant City Attorney, City of Brownsville

The Honorable Robin D. Smith, Presiding Judge, City of Midland

Ms. Monica Smoot, Consultant, ASTEP Seminars, Austin

The Honorable Daniel Solis, Municipal Judge, City of Dallas

The Honorable Mitchell Solomon, Municipal Judge, City of Austin

The Honorable Sharon Newman-Stanfield, Municipal Judge, City of Ft. Worth

Ms. Julie Steiger, Administrative Tech III, Driver's License Division, Department of Public Safety, Austin

Ms. Deydra Stevenson, Court Administrator, City of Abilene

Ms. Jacklyn Strickland, Senior Trainer, 311 Houston Services Helpline, City of Houston

Ms. Jennifer Sullivan, CMCC, Court Clerk, City of Katy

Mr. Julian Taylor III, City Attorney, City of Freeport

Mr. James Tucker, Hot Check Office Administrator, Lubbock County District Attorney's Office

Mr. Ryan Kellus Turner, Program Attorney & Deputy Counsel, TMCEC, Austin

Mr. Don Vanadore, Court Services Specialist, City of Grand Prairie

The Honorable John Vasquez, Municipal Judge, City of Austin

Ms. Diana Vaughn, CPA, Internal Auditor, City of Carrollton

Mr. Robert Warneke, Staff Attorney, Commission on Judicial Conduct, Austin

Mr. Mark Warren, Training Coordinator, Texas Association of Counties, Austin

Ms. Linda Wasserman, Special Projects Coordinator, City of San Antonio Office of Customer Service &, San Antonio

The Honorable Denn Whalen, Presiding Judge, City of Odessa

Mr. Ron White, City Marshal, City of Westlake

The Honorable Penny White, University of Tennessee School of Law, Knoxville, TN

Mr. Robert Williams, Consultant, ASTEP Seminars, Austin

Ms. LaJuana Williams, Administrative Technician IV Driver Safety, Department of Public Safety, Austin

The Honorable Steve Williamson, Municipal Judge, City of Fort Worth

Ms. Seana B. Willing, Staff Attorney, Commission on Judicial Conduct, Austin



Academic Schedule

NEW, NON-ATTORNEY JUDGES:

12/9-12/13, 2002
32-Hour Judges/Clerks
Hyatt Regency Austin
208 Barton Springs Austin, 78704
512/477-1234
Registration due by: 11/15

7/21-7/25, 2003
32-Hour Judges/Clerks
Radisson Hotel & Suites Austin
111 East Cesar Chavez Street Austin, 78701
512/478-9611
Registration due by: 6/27

JUDGES 12-HOUR:

10/16-10/17, 2002
12-Hour Judges
Sheraton Tyler
5701 S. Broadway Tyler, 75703
903/561-5800
Registration due by: 9/20
(A few rooms are still available--call TMCEC)

10/31-11/1, 2002
12-Hour Judges/Clerks
Lakeway Inn Austin
101 Lakeway Drive Austin, 78734
512/261-6600
Registration due by: 10/7

1/23-1/24, 2002
12-Hour Judges/Clerks
Omni San Antonio
9821 Colonnade Blvd. San Antonio, 78230
210/691-8888
Registration due by: 1/6

2/20-2/21, 2003
12-Hour Judges/Clerks
Adam's Mark Hotel & Resort
2900 Briarpark Drive Houston, 77042
713/978-7400
Registration due by: 1/27

3/3-3/4, 2003
12-Hour Judges/Clerks
Omni Dallas Hotel Park West
1590 LBJ Freeway Dallas, 75234
972/869-4300
Registration due by: 2/10

4/10-4/11, 2003
12-Hour Judges/Clerks
Holiday Inn Park Plaza Lubbock
3201 Loop 289 Lubbock, 79401
806/797-3241
Registration due by: 3/14

5/1-5/2, 2003
12-Hour Clerks
Radisson South Padre
500 Padre Blvd. South Padre 78597
956/761-6511
Registration due by: 4/7

5/5-5/6, 2003
12-Hour Atty Judges
Radisson South Padre
500 Padre Blvd. South Padre 78597
956/761-6511
Registration due by: 4/7

5/7-5/8, 2003
12-Hour Non-Atty Judges
Radisson South Padre
500 Padre Blvd. South Padre 78597
956/761-6511
Registration due by: 4/7

6/5-6/6, 2003
12-Hour Judges/Clerks
Hilton Midland & Towers
117 West Wall Avenue Midland, 79701
915/683-6131
Registration due by: 5/12

JUDGES 12-HOUR SPECIAL TOPIC:

5/21-5/22, 2003
Judges Special Topic: Evidence
Omni Southpark Austin
4140 Governor's Row Austin, 78744
512/448-2222
Registration due by: 4/25

6/17-6/18, 2003
Court Administrators/Prosecutors & Judges Special Topic: Juveniles
Omni Bayfront Corpus Christi
900 N. Shoreline Boulevard, Corpus Christi, 78401
361-887-1600
Registration due by: 5/23

JUDGES AND CLERKS 12-HOUR LOW VOLUME COURTS:

11/13-11/14, 2002
Low Volume
Renaissance Casa De Palmas McAllen
101 N. Main Street McAllen, 78501
956/631-1101
Registration due by: 10/21

1/7-1/8, 2003
Low Volume
Hilton Waco
113 S. University Parks Dr. Waco, 76701
254/754-8484
Registration due by: 12/16

3/27-3/28, 2003
Low Volume
Embassy Suites Abilene
4250 Ridgemont Drive Abilene, 79606
915/698-1234
Registration due by: 3/1

NEW CLERKS:

12/9-12/13, 2002
32-Hour Judges/Clerks
Hyatt Regency Austin
208 Barton Springs Austin, 78704
512/477-1234
Registration due by: 11/15
7/21-7/25, 2003

32-Hour Judges/Clerks
Radisson Hotel & Suites Austin
111 East Cesar Chavez Street Austin, 78701
512/478-9611
Registration due by: 6/27

CLERKS 12-HOUR:

10/14-10/15, 2002
12-Hour Clerks
Sheraton Tyler
5701 S. Broadway Tyler, 75703
903/561-5800
Registration due by: 9/20

10/31-11/1, 2002
12-Hour Judges/Clerks
Lakeway Inn Austin
101 Lakeway Drive Austin, 78734
512/261-6600
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1/23-1/24, 2003
12-Hour Judges/Clerks
Omni San Antonio
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12-Hour Judges/Clerks
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2900 Briarpark Drive Houston, 77042
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3/3-3/4, 2003
12-Hour Judges/Clerks
Omni Dallas Hotel Park West
1590 LBJ Freeway Dallas, 75234
972/869-4300
Registration due by: 2/10

4/10-4/11, 2003
12-Hour Judges/Clerks
Holiday Inn Park Plaza Lubbock
3201 Loop 289 Lubbock, 79401
806/797-3241
Registration due by: 3/14

5/1-5/2, 2003
12-Hour Clerks
Radisson South Padre
500 Padre Blvd. South Padre 78597
956/761-6511
Registration due by: 4/7

PROSECUTORS:

12/3-12/4, 2002
Bailiffs/ Warrant Officers and Prosecutors
Radisson Hotel & Suites Austin
111 East Cesar Chavez Street Austin, 78701
512/478-9611
Registration due by: 11/8

6/17-6/18, 2003
Court Administrators/Prosecutors & Judges Special Topic: Juveniles
Omni Bayfront Corpus Christi
900 N. Shoreline Blvd. Corpus Christi, 78401
361/887-1600
Registration due by: 5/23

COURT ADMINISTRATORS:

3/18-3/19, 2003
Bailiffs/ Warrant Officers and Court Administrators
Hilton Arlington
2401 East Lamar Arlington, 76006
817/640-3322
Registration due by: 2/21

6/17-6/18, 2003
Court Administrators/Prosecutors & Judges Special Topic: Juveniles
Omni Bayfront Corpus Christi
900 N. Shoreline Blvd. Corpus Christi, 78401
361/887-1600
Registration due by: 5/23

BAILIFFS & WARRANT OFFICERS

12/3-12/4, 2002, 2003
Bailiffs/ Warrant Officers and Prosecutors
Radisson Hotel & Suites Austin
111 East Cesar Chavez Street Austin, 78701
512/478-9611
Registration due by: 11/8

3/18-3/19, 2003
Bailiffs/ Warrant Officers and Court Administrators
Hilton Arlington
2401 East Lamar Arlington, 76006
817/640-3322
Registration due by: 2/21

LEGISLATIVE UPDATES FOR JUDGES & ALL COURT PERSONNEL:

8/4, 2003
Legislative Update
Sofitel Houston
425 N. Sam Houston Parkway E.
Houston, 77060
281/445-9000
Registration due by: 6/11

8/8, 2003
Legislative Update
Omni Southpark Austin
4140 Governor's Row Austin, 78744
512/448-2222
Registration due by: 6/11

CLERK CERTIFICATION LEVEL III ASSESSMENT CLINICS:

2/7-2/9, 2003
Assessment Clinic
Del Lago Resort
600 Del Lago Blvd. Montgomery, 77356
936/582-6100
Registration due by: 1/10

5/20-5/22, 2003
Assessment Clinic
Omni Southpark Austin
4140 Governor's Row Austin, 78744
512/448-2222
Registration due by: 4/25

A Reminder!

Please call TMCEC if your housing needs change. You will be billed $80 plus tax if you reserve a room and do not use it. If you need to change your arrival date, contact the TMCEC offices to cancel the room so that grant funds won't be wasted.

TEXAS MUNICIPAL COURTS EDUCATION CENTER
2002-2003 Registration Form

Seminar Date: _____ **Seminar Site:** _____

Type of Program: ☐ **Judge** ☐ **Clerk** ☐ **Court Administrator** ☐ **Prosecutor** ☐ **Warrant Officer/Bailiff***
☐ I intend to attend the *Mock Plea and Mock Trial Workshop* or the *Survey of the Rules of Evidence* Pre-Conference

TMCEC computer data is updated from the information you provide. Please print legibly and fill out form completely.

Last Name: _____ First Name: _____ MI: _____

Names also known by: _____ Male/Female: _____

Position Held: _____

Date Appointed/Elected/Hired: _____ Years Experience: _____

HOUSING INFORMATION

TMCEC will make all hotel reservations from the information you provide on this form. TMCEC will pay for a single occupancy room at all seminars: four nights at the 32-hour seminars and two nights at the 12-hour seminars. To share with another seminar participant, you must indicate that person's name on this form.

☐ I need a private, single-occupancy room.

☐ I need a room shared with a seminar participant. Please indicate roommate by entering seminar participant's name: _____
(Room will have 2 double beds.)

☐ I need a private, double-occupancy room, but I'll be sharing with a guest. (I will pay additional cost, if any, per night.)
I will require: ☐ 1 king bed ☐ 2 double beds

☐ I do not need a room at the seminar.

Date arriving: Arriving by: ☐ Car ☐ Airplane ☐ Smoker ☐ Non-Smoker

COURT MAILING ADDRESS

It is TMCEC policy to mail all correspondence directly to the court address.

Municipal Court of: _____ Mailing Address: _____ Zip: _____

Office Phone: _____ Court Phone: _____ FAX : _____

Primary City Served: _____ Other Cities Served: _____

☐ Attorney ☐ Non-Attorney ☐ Full-Time ☐ Part-Time

Status: ☐ Presiding Judge ☐ Associate/Alternate Judge ☐ Justice of the Peace ☐ Mayor
☐ Court Clerk ☐ Deputy Clerk ☐ Court Administrator ☐ Warrant Officer/
☐ Prosecutor Bailiff*
☐ Assessment Clinic **(A program fee of $100 must accompany registration form.)**
☐ Other: _____

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

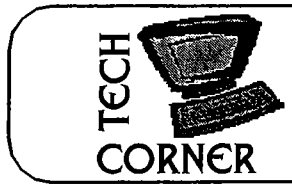
Judge's Signature _____ Date: _____

Municipal Court of

I certify that I am currently serving as municipal judge, city prosecutor, or court support personnel in the State of Texas. I agree that I will be responsible for any costs incurred if I do not cancel five (5) working days prior to the seminar. If I have requested a room, I certify that I live at least 30 miles from the seminar site and have read the cancellation and no show policies in the General Seminar Information section located on Pages 17-18. Payment is required ONLY for the assessment clinics and legislative updates; payment is due with registration form. Participants in the assessment clinics and legislative updates must cancel in writing two weeks prior to seminar to receive refund.

_____

Participant Signature **Date**



Jo Dale Bearden
TMCEC Program Coordinator

Court Technology Survey Summary

Over the past academic year, TMCEC surveyed municipal court personnel about their court and the technology used therein. The survey was distributed to court personnel who attended the Court Technology class in each of the 12-hour Experienced Clerk seminars. The class was a breakout session, in that not all court personnel who attended the TMCEC program attended this session, and the survey was voluntary. The main topics covered by the survey included computer access, computer applications, legal research, and websites. The following results are based on 217 court personnel, who represent 166 cities.

Computer Access

In the digital age, when most of the three-year-olds that we know can use computers, many of us assume that computer access is available for everyone. But, national statistics report that in September of 2001 only 65.6 percent of Americans were computer users.[1] The TMCEC technology survey results show that court personnel participating in the survey are above the national standard at 95 percent. This statistic isn't alarming though; the survey was administered to personnel wanting to learn more about court technology. They were probably familiar with technology already. When questioned about the location of computer access: 49 percent reported having access at work; 37 percent reported having access at home; and nine percent reported having access "elsewhere".

Computer Applications

A computer application is a specific use of the computer, often called application software. The survey asked respondents to identify what applications they used at work. The survey measured word processing, spreadsheets, databases, case management software, electronic mail (e-mail), and electronic scheduling.

The survey reported that 80 percent of those surveyed use word processing applications—applications that allow the user to create and edit text files, such as Microsoft Word or Corel Word Perfect. Forty-eight percent of those surveyed reported using spreadsheets—applications that allow the user to create and edit rows and columns of numbers, for example, Microsoft Excel. Only 36 percent of respondents reported using databases—applications that allow users to create and edit transactions and summarize, sort, and print reports, such as Microsoft Access. Sixty-four percent of those surveyed reported that their courts are using some type of case management software. Sixty-three percent of respondents are using e-mail. Only 17 percent of those surveyed reported using electronic scheduling—the use of the computer to schedule dockets or personnel.

Legal Research

The survey asked participants for information regarding resources being used for legal research. Nine percent of respondents reported using Lexis-Nexis. Ten percent of respondents reported using Westlaw from The West Group. Eight percent of those surveyed reported using CD-ROMs from one of the two companies listed above. Eleven percent of respondents are conducting legal research using print resources, such as *Black's* and the *Southwestern Reporter*. Nineteen percent of those surveyed are using the Internet to conduct legal research and, when asked which sites they were visiting, the responses were:

- Texas Municipal Courts Education Center (www.tmcec.com)
- Texas Municipal League (www.tml.org), Texas Legislature Online (www.capitol.state.tx.us)
- Attorney General of Texas (www.oag.state.tx.us)
- Texas Department of Public Safety (www.txdps.state.tx.us)
- Texas Alcoholic Beverage Commission (www.tabc.state.tx.us
- Texas Office of Court Administration (www.courts.state.tx.us)
- Yahoo (www.yahoo.com) and
- Findlaw (www.findlaw.com).

Websites

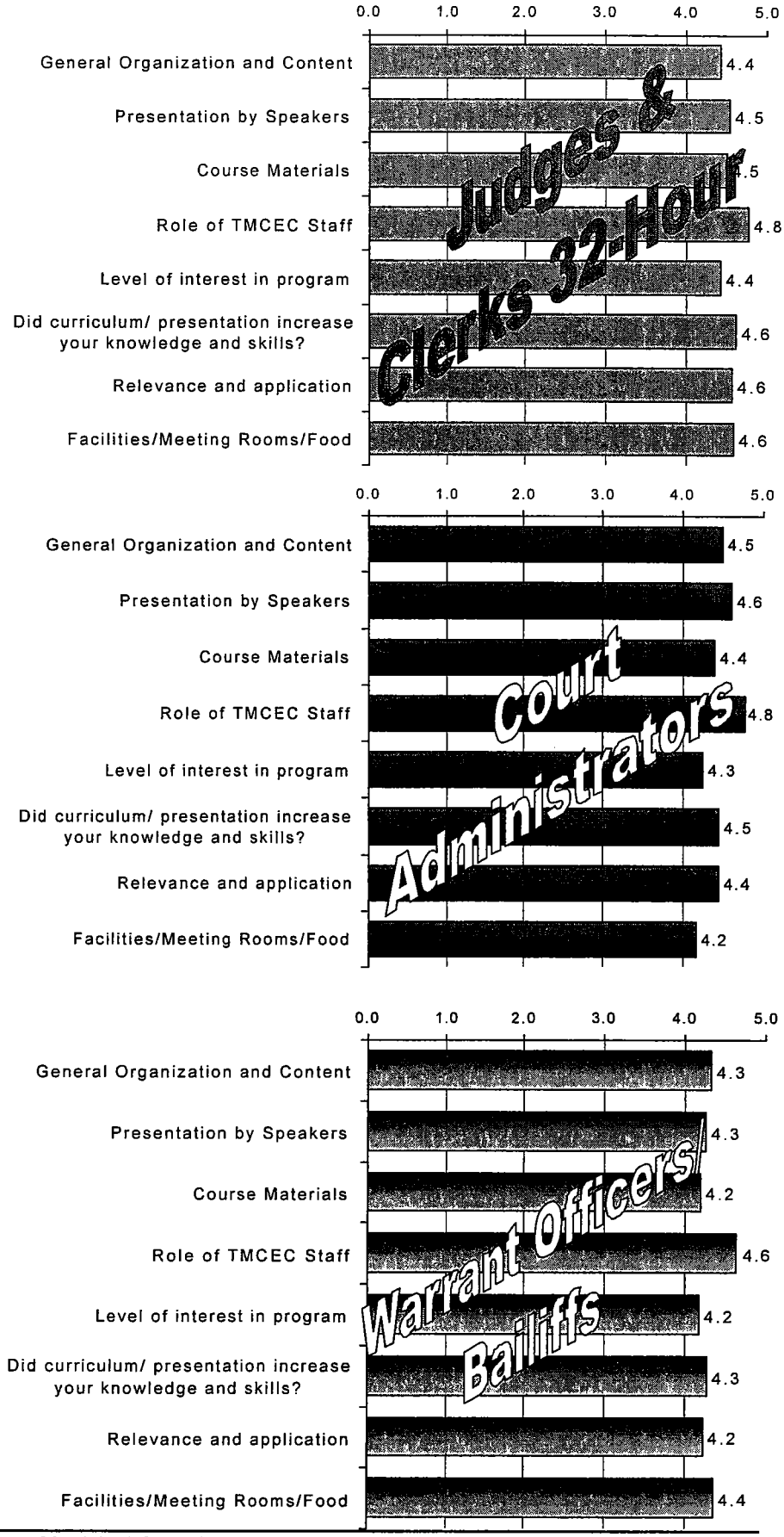
Most organizations have a website, including hotels, stores, and municipalities. Many courts have created websites as a tool for their communities. Texas Municipal Courts Education Center has links to many Texas municipal courts websites (www.tmcec.com/courts.html). When participants in the survey were asked if their courts had a website, 39

percent responded YES and 54 percent responded NO. The survey delved deeper and asked if YES, what type of information was included on the website. The responses were: 34 percent included hours of operation, nine percent included juror information, seven percent listed docket information, and seven percent stated they were doing on-line payments.

Conclusion

Lastly, the survey asked the respondents to list any other technology their courts were using. Responses varied: camera security equipment, handheld ticket writers, automated phone systems, voice recording and video recording, and document imaging. Keeping in mind that this survey was conducted in a TMCEC court technology class and that the results cannot be generalized past those participants, municipal courts in general are beginning to embrace technology. The survey was conducted with the goal, as a court technology faculty and author, of developing a better understanding of what technologies municipal courts are using and how rampant they are being used. I believe that my goal was met. Thanks to all who participated in the survey.

[1] *A Nation Online: How Americans Are Expanding Their Use of the Internet*, U.S. Department of Commerce, Economics and Statistics Administration, National Telecommunications and Information Administration, February 2002.



Snap Shot continued from page 11

may be a viable option for smaller courts who rarely hold trials. For nearly three percent of all municipal courts, predominantly low and small volume, this is the preferred method for securing a prosecutor); or

- Proceed to trial. (Presumably, this option triggers Article 45.032 that states, if "upon a trial the state fails to prove a *prima facie* case of the offense alleged in the complaint, the defendant is entitled to a directed verdict of 'not guilty.'")

[1] *Annual Report of the Texas Judicial System*, Fiscal Year 2001, Office of Court Administration, Austin, Texas.

[2] Statistics from the Office of Court Administration suggest the following: the median age of a municipal court judge is 55-years (the youngest is 24 and the oldest is 87); the median range of service is between five and nine years; more than 60 percent are male, and 84 percent are Caucasian. *Id.* at 13. Detailed salary information for municipal judges are published annually in the *Texas Municipal League Salary Survey.*

[3] Based off of OCA data, it is estimated that municipal judges constitute 41 percent of all judges in Texas who are attorneys.

[4] While defendants have a constitutional right to represent themselves, a significant amount of Texas case law provides that an attorney must represent nonhuman entities (*e.g.*, governments, corporations, and associations). Furthermore, Section 81.102 of the Government Code requires that persons practicing law be licensed by the Supreme Court of Texas and in good standing with the State Bar of Texas. Accordingly, while peace officers can be called as witnesses to testify, they cannot act as prosecutors presenting the State's case.

[5] Article 45.201, Code of Criminal Procedure. While the county attorney has the ultimate right to prosecute in a municipal court, he or she may not receive additional compensation. *Harris County v. Stewart*, 41 S.W. 650 (Tex. 1897); *Howth v. Greer*, 552 S.W. 211 (Tex.Civ.App. 1905).

[6] Article 45.031, Code of Criminal Procedure.

Model Rules continued from page 12

3. **Signed Endorsements** – This method not only compels parties (and especially lawyers) to carefully read and acknowledge the rules of decorum, it also acts as proof of admonishment in instances where insubordination results in contempt.

Regardless of which rules you incorporate or the manner in which they are disseminated, remember one of the most important maxims of parenthood: The only thing worse than having no rules is having rules you do not enforce.

As previously stated, each court is ultimately responsible for creating rules of decorum. To assist courts in drafting such rules the model on page 13 is offered. Its contents and form reflect the more common rules of decorum.

TEXAS MUNICIPAL COURTS EDUCATION CENTER
1609 SHOAL CREEK BLVD., SUITE 302
AUSTIN, TX 78701
www.tmcec.com

TMCEC MISSION STATEMENT

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

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1-800-252-3718
FAX (512) 320-0996

JUDICIAL ETHICS ORIENTATION

Presented by

Judy Spalding
Commission on Judicial Conduct
Austin

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

1. Describe the role of the Commission on Judicial Conduct in reviewing ethics complaints.
2. Identify areas of possible conflict between the role of the judge and the role of the advocate.
3. Distinguish between a legal question, not subject to review by the State Commission on Judicial Conduct, and an ethical question, which could result in a sanction.

Judicial Decision Making And Ethics

An Exercise for Judges

4

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Why Are You Here Today?

1. It was a chance to get out of town
2. I need to know more ethics
3. Reassurance that I already know it all
4. All of the above

What Will You Learn Today?

1. Recognize demeanor situations to avoid
2. Avoid *ex parte* communications
3. Understand pitfalls in court relationships
4. Refrain from inappropriate political activity
5. Avoid misconduct in judicial decisions
6. All of the above

A Quick Pre-Quiz on the Code of Judicial Conduct

The Code of Judicial Conduct

Includes both aspirational and mandatory provisions

1. True
2. False

The Code of Judicial Conduct

Is written by judges for judges

1. True
2. False

The Code of Judicial Conduct

Is the primary basis for judicial discipline

1. True
2. False

Red Flags

1. Anger
2. Jokes
3. Sympathy
4. Sarcasm
5. All of the above

Scenario #1: A Loud Litigant

Judge Nan is busy working on paperwork in her office when she hears a commotion from the room next door where her clerks are working. It's a man's voice, loud and clear: "That's ridiculous! That judge can't make me pay that much! I wasn't the only one speeding that day! It's a conspiracy between the *(cussword deleted)* cops and the judge. I'll show you!"

What Should Judge Nan Do?

1. Scream at him to "Shut up or else!"
2. Arrest and jail him for contempt
3. Warn him, then hold him in contempt if the conduct continues
4. Warn him, then file charges for disorderly conduct if the conduct continues

Scenario #2: A Joking Judge

Recognizing that people coming to court are often tense and angry, Judge Joe likes to start off the proceedings with a few jokes to reduce tension and let folks know he's a "regular guy." Occasionally, he'll throw in an Aggie joke or two, but he really likes to poke fun at the female prosecutor assigned to his court. Judge Joe knows all the good (and not so good) dumb blonde jokes out there...

Possible Ethical Issues...

1. May raise issues of bias or prejudice - 3B(5) and/or 3B(6)
3. Failure to maintain order and decorum - 3B(3)
4. Failure to remain courteous and dignified - 3B(4)
5. All of the above

Canon 3B(6)

A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not knowingly permit staff, court officials and others subject to the judge's direction and control to do so

Scenario #3: Sympathy for Sue

Sue is before the court fighting a traffic ticket. Sam, the prosecutor, has all his witnesses present, including the officer who issued the citation, and is prepared to present an open and shut case. Unfortunately for Sam, Sue paints a very sympathetic picture – she is 78 years old, a little hard of hearing, and slow moving with her walker. She reminds Judge Steve of his dear old Nana…

Sympathy Scenario, continues...

Meanwhile, Sam is really obnoxious, loud, and arrogant. He keeps interrupting Sue while she tries to present her defense and shows very little patience with this sweet old lady... Judge Steve has heard enough...

What is the best judicial response?

1. Cut Sam off and rule for Sue despite the evidence. How could you convict your Nana?
2. Rule for the State, but make sure everyone hears you admonish Sam for being such a jerk
3. Wait to hear all of the evidence and base your ruling on the facts and evidence presented

If the Judge cuts Sam off...

Possible violations:

1. Courtesy - Canon 3B(4)
2. Right to be heard - Canon 3B(8)

Canon 3B(4)

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

Scenario #4, Sarcasm Sprouts...

After the trial, Sam comes back to have a private talk with Judge Steve about the public admonishment. Sam is visibly angry and starts to get loud and emotional. Judge Steve tells Sam in a very sarcastic and condescending way: "Pull yourself together and start acting like a man. Do you want people to think you're gay?"

Possible Ethical Issues

1. Courtesy - Canon 3B(4)
2. Bias and prejudice - Canon 3B(5)
3. Bias/prejudice based on protected class - Canon 3B(6)
4. All of the above

Demeanor Issues: Forms of Address

Mr., Ms.
Little Lady
Darlin'
Son
Boy
Hey, babe!
Joe/Jane (reserved for old friends who appear in your court)

Canon 6C(2)?

Stay tuned… for the next session --

The Truth
About
Ex Parte

The Truth About Ex Parte

What is *ex parte*?

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

Scenario #5: Slipping into *Ex Parte*...

Sue visits Judge Steve the next day to tell him how much she appreciated his patience in court even though she lost the case. In tears, she begins to tell the judge of the many hardships facing her family and the reasons why she cannot pay the fine or take defensive driving. She surely wishes Judge Steve would reconsider the verdict.

Possible Judicial Actions

1. Dismiss the case outright
2. Change the conditions of probation
3. Give Sue the money to pay the fine
4. None of the above

If the judge changes the judgment...

Possible violations are:

1. Failure to comply with the law - 2A
2. Improper *ex parte* communication - 6C(2)
3. Prosecutor wasn't present - 3B(8)
4. All of the above

Canon 3B(8)

A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law

Scenario # 6: Danger in the Grocery Store

Judge Amanda is standing in the check-out line at the grocery store, when she is confronted by Martha, another shopper. Martha is irate because she and her daughter must appear in court on a truancy violation that she believes is baseless and was brought against them solely in retaliation by school officials who are upset about a letter to the editor Martha wrote last month that was critical of the principal and other officials.

Does this scenario present an *ex parte* problem?

1. Yes
2. No
3. It all depends
4. It's a close call

Canon 6C(2)

A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider *ex parte* or other communications concerning the merits of a pending judicial proceeding…

However…

The following communications are not prohibited:

- Uncontested administrative or procedural matters;
- Magistrate duties and functions;
- Determining where jurisdiction of claim or dispute may lie;
- Determining if claim or dispute might more appropriately be resolved in another judicial or non-judicial forum;
- Mitigating circumstances following a plea of no contest or guilty for a fine-only offense; or
- Any other matters where *ex parte* communications are contemplated or authorized by law

Scenario #7: Naughty Nelda

Judge Ned has been in office for 20 years. His faithful clerk for all that time has been Nelda, his wife's best friend. When Judge Ned returned from a judicial conference last month, he discovered that two cash payments for fines had not been deposited. When he questioned Nelda, she tearfully confessed to "borrowing" the money to cover her husband's gambling debt.

What is the best judicial response?

1. Tell Nelda she has one week to repay the money
2. Report the situation to the appropriate local law enforcement authorities
3. Loan Nelda the money to deposit
4. None of the above

If Judge Ned tries to help Nelda…

Possible violations:

(1) Failure to comply with the law – 2A

(2) Allowing relationship to influence conduct or judgment – 2B

Scenario #8: It's Open War

"Enough is enough!" said Judge Alvin at the monthly meeting of the municipal judges in his city. The city manager and the mayor expect the judges to be nothing more than income generators, filling the city coffers with fines, court costs, and administrative fees. There is no time left for administrative matters, staff training, and community outreach programs. Where's the money for additional clerks and bailiffs? Something's got to give…

Which is the best judicial response?

1. Announce that the court will not impose fines until the city manager, mayor, and city council members come around
2. Refuse to hold trials until more clerks and bailiffs are provided
3. Close the court until further notice
4. None of the above

What if the judges stop work?

Possible violations:

(1) Failure to comply with the law – 2A

(2) Judicial duties take precedence – 3A

(3) Judges shall hear and decide matters assigned to the judge – 3B(1)

(4) Willful conduct that is inconsistent with proper performance of duties – Art. V. Section 1-a(6)A

Ethical Decision Making in Today's Political Environment

- Canon 5, Code of Judicial Conduct
- The Texas Election Code
- Texas Penal Code
- State Commission on Judicial Conduct
- Texas Municipal Courts Education Center
- Advisory Opinions

Scenario #9: A Judicial Endorsement

Judge Dolly's best friend, Dan, is running for sheriff. Judge Dolly happily accepts an invitation to attend his fund raiser and to introduce the candidate. When asked, she cannot lie – yes, Dan would make a great sheriff! Judge Dolly and Dan strike a pose, and the photo is front page news, along with the judge's supportive statements of Dan.

Possible Ethical Issues

1. An improper endorsement - Canon 5(2)
2. Lending prestige of office to advance the private interests of others - Canon 2B
3. Bias or prejudice - Canon 3B(5)
4. All of the above

Canon 2B

A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others

Canon 5(2)

A judge ... shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party. A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this Canon and Canon 3B(10).

Canon 3B(10)

A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge's court in a manner which suggests to a reasonable person the judge's probable decision on any particular case...

Scenario #10: A Judicial Promise

Judge Val, who is also a justice of the peace, is preparing campaign literature for her bid for re-election. Judge Val is known to be pro-law enforcement, especially with two sons serving as DPS officers. The judge's campaign literature identifies her as being "tough on crime." It goes on to say that she has no sympathy for and will show no leniency to criminals who cause bodily injury to their victims. Finally, when it comes to family violence, Judge Val proclaims: "I will never deny a woman's request for protection! I take family violence seriously--unlike my opponent."

Possible Ethical Issues

1. Bias and prejudice - 3B(5)
2. Gender bias - 3B(6)
3. Public comment - 3B(10)
4. Improper promise - 5(1)(i)
5. Misrepresentation about opponent – 5(1)(ii)
6. All of the above

Canon 5(1)(i)

A judge or judicial candidate shall not make pledges or promises of conduct in office regarding pending or impending cases, specific classes of cases, specific classes of litigants, or specific propositions of law that would suggest to a reasonable person that the judge is predisposed to a probable decision in cases within the scope of the pledge

Canon 5(1)(ii)

A judge or judicial candidate shall not knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent;

Scenario #11: A Fatherly Fine

Judge Ed's son got a speeding ticket. Judge Ed, believing that a judge and a judge's family should be role models for the community, is not happy. The son's case is set for trial because the son doesn't think he was guilty. The judge hears the case and fines him the maximum.

Possible Ethical Issues

1. Failure to comply with the law - 2A; see, Tex. Code Crim. Proc. Art. 30.01
2. Bias and prejudice - 3B(5)
3. Recusal/Disqualification – 3B(1)
4. All of the above.

Canon 3B(1)

A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate

Scenario #12: Beyond Discretion

Judge Bob is called to magistrate a convicted felon on charges that he orchestrated a prison escape, car-jacked a vehicle, and led cops on a high-speed chase that sent several people to the hospital. Reporters are staked out at the jail awaiting the outcome of the magistration. Judge Bob issues an unusually low bond. Amid public outcry, the defendant is released the next morning.

Possible Ethical Issues

1. None, this is solely an appellate issue
2. Professional competence - 3B(2)
3. Failure to comply with the law - 2A
4. Willful conduct that is inconsistent with the proper performance of duties … - Art. V, Section 1-a(6)

Canon 3B(2)

A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism

The Constitution says a judge may be disciplined for:

- Willful or persistent violation of Supreme Court rules
- Incompetence in performing duties
- Willful or persistent violation of the Code of Judicial Conduct
- Willful or persistent conduct inconsistent with proper performance of duties
- Willful or persistent conduct that brings public discredit upon judiciary or administration of justice

The *In re Barr* Case

There are 3 circumstances in which legal error may be found to violate the Canons:

- The commission of egregious legal error;
- The commission of a continuing pattern of legal error; or,
- The commission of legal error which is founded on bad faith....

More from *Barr*

...it has been held to be not only judicial error but also judicial misconduct when:

- the judge failed to advise defendants of their constitutional right to counsel;
- The judge denied defendants a full and fair hearing;
- The judge coerced guilty pleas;
- The judge directed the jury to find the defendant guilty;
- The judge failed to order recognizance or bail; or
- The judge sentenced the defendant to jail when only a fine was provided by law.

Hot Topics

- Mandatory Judicial Education
- Duties to Supervise
- Sexual Harassment
- Alcohol/Drug Impairment
- Sex, Lies and Videotapes
- Dual Roles - Law Enforcement

ETHICS ADVICE

- **State Commission on Judicial Conduct**
  - Seana Willing, Executive Director
  - Toll Free: (877) 228-5750
  - www.scjc.state.tx.us
- **Committee on Judicial Ethics**
  - Justice Mack Kidd, Chair
  - P.O. Box 12547, Austin, TX 78711
  - Mack.Kidd@3rdcoa.courts.state.tx.us

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  - Elaine Thompson, Program Manager
  - (512) 463-8138

TEXAS CODE OF JUDICIAL CONDUCT

(As amended by the Supreme Court of Texas through August 22, 2002)

Preamble

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code of Judicial Conduct are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

Canon 1: Upholding the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary is preserved. The provisions of this Code are to be construed and applied to further that objective.

Canon 2: Avoiding Impropriety and the Appearance of Impropriety in All of the Judge's Activities

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

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

C. A judge shall not knowingly hold membership in any organization that practices discrimination prohibited by law.

Canon 3: Performing the Duties of Judicial Office Impartially and Diligently

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. Judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.

(2) A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge shall require order and decorum in proceedings before the judge.

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

(5) A judge shall perform judicial duties without bias or prejudice.

(6) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not knowingly permit staff, court officials and others subject to the judge's direction and control to do so.

(7) A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status against parties, witnesses, counsel or others. This requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceeding.

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

(a) communications concerning uncontested administrative or uncontested procedural matters;

(b) conferring separately with the parties and/or their lawyers in an effort to mediate or settle matters, provided, however, that the judge shall first give notice to all parties and not thereafter hear any contested matters between the parties except with the consent of all parties;

(c) obtaining the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond;

(d) consulting with other judges or with court personnel;

(e) considering an *ex parte* communication expressly authorized by law.

(9) A judge should dispose of all judicial matters promptly, efficiently and fairly.

(10) A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge's court in a manner which suggests to a reasonable person the judge's probable decision on any particular case. This prohibition applies to any candidate for judicial office, with respect to judicial proceedings pending or impending in the court on which the candidate would serve if elected. A judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge or judicial candidate is a litigant in a personal capacity.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity. The discussions, votes, positions taken, and writings of appellate judges and court personnel about causes are confidences of the court and shall be revealed only through a court's judgment, a written opinion or in accordance with Supreme Court guidelines for a court approved history project.

C. Administrative Responsibilities.

(1) A judge should diligently and promptly discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

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

(3) A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

(5) A judge shall not fail to comply with Rule 12 of the Rules of Judicial Administration, knowing that the failure to comply is in violation of the rule.

D. Disciplinary Responsibilities.

(1) A judge who receives information clearly establishing that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the State Commission on Judicial Conduct or take other appropriate action.

(2) A judge who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action.

Canon 4: Conducting the Judge's Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations

A. Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or

(2) interfere with the proper performance of judicial duties.

B. Activities to Improve the Law. A judge may:

(1) speak, write, lecture, teach and participate in extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code; and,

(2) serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He or she may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system and the administration of justice.

C. Civic or Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the profit of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly or frequently engaged in adversary proceedings in any court.

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

(3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

D. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves. This limitation does not prohibit either a judge or candidate from soliciting funds for appropriate campaign or officeholder expenses as permitted by state law.

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business. A judge shall not be an officer, director or manager of a publicly owned business. For purposes of this Canon, a "publicly owned business" is a business having more than ten owners who are not related to the judge by consanguinity or affinity within the third degree of relationship.

(3) A judge should manage any investments and other economic interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other economic interests that might require frequent disqualification. A judge shall be informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to be informed about the personal economic interests of any family member residing in the judge's household.

(4) Neither a judge nor a family member residing in the judge's household shall accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to the judge; books and other resource materials supplied by publishers on a complimentary basis for official use; or an invitation to the judge and spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a family member residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a gift from a friend for a special occasion such as a wedding, engagement, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a family member residing in the judge's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or person whose interests have come or are likely to come before the judge;

(d) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.

E. Fiduciary Activities.

(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

F. Service as Arbitrator or Mediator. An active full-time judge shall not act as an arbitrator or mediator for compensation outside the judicial system, but a judge may encourage settlement in the performance of official duties.

G. Practice of Law. A judge shall not practice law except as permitted by statute or this Code. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

H. Extra-Judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

I. Compensation, Reimbursement and Reporting.

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's family. Any payment in excess of such an amount is compensation.

(2) Public Reports. A judge shall file financial and other reports as required by law.

Canon 5: Refraining from Inappropriate Political Activity

(1) A judge or judicial candidate shall not:

(i) make pledges or promises of conduct in office regarding pending or impending cases, specific classes of cases, specific classes of litigants, or specific propositions of law that would suggest to a reasonable person that the judge is predisposed to a probable decision in cases within the scope of the pledge;

(ii) knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent; or

(iii) make a statement that would violate Canon 3B(10).

(2) A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party. A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this Canon and Canon 3B(10).

(3) A judge shall resign from judicial office upon becoming a candidate in a contested election for a non-judicial office either in a primary or in a general or in a special election. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or while being a candidate for election to any judicial office.

(4) A judge or judicial candidate subject to the Judicial Campaign Fairness Act, Tex. Elec. Code §253.151, *et seq.* (the "Act"), shall not knowingly commit an act for which he or she knows the Act imposes a penalty. Contributions returned in accordance with Sections 253.155(e), 253.157(b) or 253.160(b) of the Act are not a violation of this paragraph.

COMMENT

A statement made during a campaign for judicial office, whether or not prohibited by this Canon, may cause a judge's impartiality to be reasonably questioned in the context of a particular case and may result in recusal.

Canon 6: Compliance with the Code of Judicial Conduct

A. The following persons shall comply with all provisions of this Code:

(1) An active, full-time justice or judge of one of the following courts:

(a) the Supreme Court,

(b) the Court of Criminal Appeals,

(c) courts of appeals,

(d) district courts,

(e) criminal district courts, and

(f) statutory county courts.

(2) A full-time commissioner, master, magistrate, or referee of a court listed in (1) above.

B. A County Judge who performs judicial functions shall comply with all provisions of this Code except the judge is not required to comply:

(1) when engaged in duties which relate to the judge's role in the administration of the county;

(2) with Canons 4D(2), 4D(3), or 4H;

(3) with Canon 4G, except practicing law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the county court, or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.

(4) with Canon 5(3).

C. Justices of the Peace and Municipal Court Judges.

(1) A justice of the peace or municipal court judge shall comply with all provisions of this Code, except the judge is not required to comply:

(a) with Canon 3B(8) pertaining to *ex parte* communications; in lieu thereof a justice of the peace or municipal court judge shall comply with 6C(2) below;

(b) with Canons 4D(2), 4D(3), 4E, or 4H;

(c) with Canon 4F, unless the court on which the judge serves may have jurisdiction of the matter or parties involved in the arbitration or mediation; or

(d) if an attorney, with Canon 4G, except practicing law in the court on which he or she serves, or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.

(e) with Canons 5(3).

(2) A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider *ex parte* or other communications concerning the merits of a pending judicial proceeding. This subsection does not prohibit communications concerning:

(a) uncontested administrative matters,

(b) uncontested procedural matters,

(c) magistrate duties and functions,

(d) determining where jurisdiction of an impending claim or dispute may lie,

(e) determining whether a claim or dispute might more appropriately be resolved in some other judicial or non-judicial forum,

(f) mitigating circumstances following a plea of nolo contendere or guilty for a fine-only offense, or

(g) any other matters where *ex parte* communications are contemplated or authorized by law.

D. A Part-time commissioner, master, magistrate, or referee of a court listed in Canon 6A(1) above:

(1) shall comply with all provisions of this Code, except he or she is not required to comply with Canons 4D(2), 4E, 4F, 4G or 4H, and

(2) should not practice law in the court which he or she serves or in any court subject to the appellate jurisdiction of the court which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a commissioner, master, magistrate, or referee, or in any other proceeding related thereto.

E. A Judge Pro Tempore, while acting as such:

(1) shall comply with all provisions of this Code applicable to the court on which he or she is serving, except he or she is not required to comply with Canons 4D(2), 4D(3), 4E, 4F, 4G or 4H, and

(2) after serving as a judge pro tempore, should not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

F. Any Senior Judge, or a former appellate or district judge, or a retired or former statutory county court judge who has consented to be subject to assignment as a judicial officer:

(1) shall comply with all the provisions of this Code except he or she is not required to comply with Canon 4D(2), 4E, 4F, 4G, or 4H, but

(2) should refrain from judicial service during the period of an extra-judicial appointment permitted by Canon 4H.

G. Candidates for Judicial Office.

(1) Any person seeking elective judicial office listed in Canon 6A(1) shall be subject to the same standards of Canon 5 that are required of members of the judiciary.

(2) Any judge who violates this Code shall be subject to sanctions by the State Commission on Judicial Conduct.

(3) Any lawyer who is a candidate seeking judicial office who violates Canon 5 or other relevant provisions of this Code is subject to disciplinary action by the State Bar of Texas.

(4) The conduct of any other candidate for elective judicial office, not subject to paragraphs (2) and (3) of this section, who violates Canon 5 or other relevant provisions of the Code is subject to review by the Secretary of State, the Attorney General, or the local District Attorney for appropriate action.

H. Attorneys.

Any lawyer who contributes to the violation of Canons 3B(7), 3B(10), 4D(4), 5, or 6C(2), or other relevant provisions of this Code, is subject to disciplinary action by the State Bar of Texas.

Canon 7: Effective Date of Compliance

A person to whom this Code becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it.

Canon 8: Construction and Terminology of the Code

A. Construction.

The Code of Judicial Conduct is intended to establish basic standards for ethical conduct of judges. It consists of specific rules set forth in Sections under broad captions called Canons.

The Sections are rules of reason, which should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through the State Commission on Judicial Conduct. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

B. Terminology.

(1) "Shall" or "shall not" denotes binding obligations the violation of which can result in disciplinary action.

(2) "Should" or "should not" relates to aspirational goals and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined.

(3) "May" denotes permissible discretion or, depending on the context, refers to action that is not covered by specific proscriptions.

(4) "De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality.

(5) "Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(ii) service by a judge as an officer, director, advisor or other active participant, in an educational, religious, charitable, fraternal, or civic organization or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest; and

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

(6) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.

(7) "Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(8) "Law" denotes court rules as well as statutes, constitutional provisions and decisional law.

(9) "Member of the judge's (or the candidate's) family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship.

(10) "Family member residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides at the judge's household.

(11) "Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

(12) "Third degree of relationship." The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

(13) "Retired Judge" means a person who receives from the Texas Judicial Retirement System, Plan One or Plan Two, an annuity based on service that was credited to the system. (Secs. 831.001 and 836.001, V.T.C.A. Government Code [Ch. 179, Sec. 1, 71st Legislature (1989)]

(14) "Senior Judge" means a retired appellate or district judge who has consented to be subject to assignment pursuant to Section 75.001, Government Code. [Ch. 359, 69th Legislature, Reg. Session (1985)]

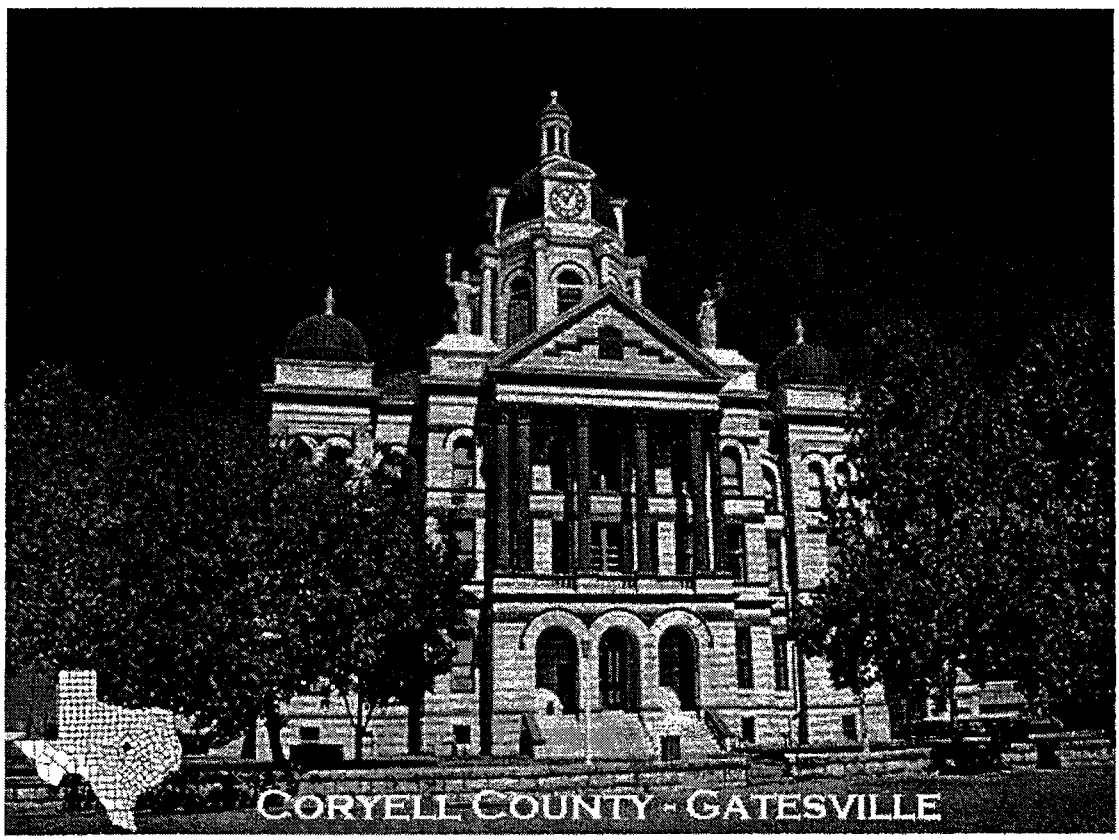
(15) "Statutory County Court Judge" means the judge of a county court created by the legislature under Article V, Section 1, of the Texas Constitution, including county courts at law, statutory probate courts, county criminal courts, county criminal courts of appeals, and county civil courts at law. (Sec. 21.009, V.T.C.A. Government Code [Ch. 2, Sec. 16.01(18), 71st Legislature (1989)])

(16) "County Judge" means the judge of the county court created in each county by Article V, Section 15, of the Texas Constitution. (Sec. 21.009, V.T.C.A. Government Code [Ch. 2, Sec. 16.01(18), 71st Legislature (1989)])

(17) "Part-time" means service on a continuing or periodic basis, but with permission by law to devote time to some other profession or occupation and for which the compensation for that reason is less than that for full-time service.

(18) "Judge Pro Tempore" means a person who is appointed to act temporarily as a judge.

STATE COMMISSION ON JUDICIAL CONDUCT



2004 Annual Report

ON THE COVER: CORYELL COUNTY COURTHOUSE, A CENTRAL TEXAS TREASURE*

The Coryell County courthouse in Gatesville, Texas, was built in 1898, and is still operating more than 100 years later. In 1849, the U.S. Infantry established Fort Gates on the Leon River in central Texas, at the site of an old buffalo grazing and Indian trail. As the frontier expanded west, Fort Gates was abandoned but nearby Gatesville grew. Coryell County was established in 1854, and Gatesville was named the county seat. The county was named for James Coryell, a frontiersman and member of the James and Rezin Bowie expedition in 1831 to the old San Saba Silver Mines.

The first courthouse was built in 1865, just before millions of cattle began passing through Gatesville on the Chisholm Trail; parts of the Trail are still visible to this day. A new courthouse was built in 1872, and the county continued to flourish. In 1897, county officials instructed an architect and builder to erect an oval-shaped building for $75,000. On the roof was to be placed a Seth Thomas clock, an 800-pound bell, an eagle and statues symbolizing Liberty and Justice.

The result is one of the most interesting and charming nineteenth-century courthouses in the Southwest, and it is listed in the U.S. Park Service's National Register of Historic Places. The courthouse exterior is made of native white limestone and red sandstone from a nearby quarry. Its architectural details reflect Romanesque and Classical influences. A time capsule is buried in a cornerstone; its contents include a bottle of whiskey, a list of the Women's Christian Temperance Union officers, a Bible, two boxes of medicine, an issue of the *Dallas Morning News*, a Columbian half-dollar and an 1897 five-cent piece.

Courthouse historians recount tales of rowdy cowboys, thrown out of saloons on the courthouse square, shooting holes through the eagle, Liberty and Justice on the roof of the new courthouse. In 1988, the courthouse's centennial renovation project included replacing these rooftop symbols. Also restored was the third story balcony over the courtroom; although no longer open to the public, the balcony had been a popular vantage point for courtroom observers.

(Continued on back cover.)

* The Commission extends its appreciation to Judge Phillip Zeigler, 52nd District Court, Coryell County, Ms. Bobbie Ross, Coryell County Coordinator of the Texas Biographies Project, and photographer Brett Cameron, for the historical perspectives and cover photo of the Coryell County Courthouse.

STATE COMMISSION ON JUDICIAL CONDUCT

2004 ANNUAL REPORT



COMMISSION MEMBERS

Joseph B. Morris, Chair

James A. Hall, Vice-Chair

Monica A. Gonzalez, Secretary

Elizabeth G. (Dee) Coats

Kathleen H. Olivares

Ronald D. Krist

R. C. Allen, III

Faye Barksdale

Rex G. Baker, III

Michael R. Fields

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COMMISSIONER INFORMATION

OFFICERS

CHAIR
Hon. Joseph B. Morris
Justice, 5th Court of Appeals
Dallas
Appointed by Texas Supreme Court
Term Expires: 11/19/2007

VICE-CHAIR
Mr. James A. Hall
Attorney
San Antonio
Appointed by State Bar of Texas
Term Expires: 11/19/2005

SECRETARY
Hon. Monica A. Gonzalez
Municipal Court Judge
San Antonio
Appointed by Texas Supreme Court
Term Expires: 11/19/2009

MEMBERS*

Hon. Kathleen H. Olivares
Judge, 205th District Court
El Paso
Appointed by Texas Supreme Court
Term Expires: 11/19/2005

Ms. Elizabeth (Dee) Coats
Houston
Appointed by Governor
Term Expires: 11/19/2003

Mr. Ronald D. Krist
Attorney
Houston
Appointed by State Bar of Texas
Term Expires: 11/19/2007

Mr. R. C. Allen, III
Corpus Christi
Appointed by Governor
Term Expires: 11/19/2005

Faye Barksdale
Arlington
Appointed by Governor
Term Expires: 11/19/2007

Hon. Rex G. Baker, III
Justice of the Peace, Precinct 4
Dripping Springs
Appointed by Texas Supreme Court
Term Expires: 11/19/2009

Hon. Michael R. Fields
Judge, County Criminal Court-at-Law No. 14
Houston
Appointed by Texas Supreme Court
Term Expires: 11/19/2009

Note: 1 Public Member position remained vacant at press time.

LETTER FROM THE EXECUTIVE DIRECTOR

November 29, 2004

The Honorable Rick Perry, Governor
The Honorable David Dewhurst, Lieutenant Governor
The Honorable Tom Craddick, Speaker of the House

Gentlemen:

It is with great pleasure that I submit the State Commission on Judicial Conduct's 2004 Annual Report, which outlines the agency's work during the past fiscal year. Although the agency saw an unprecedented number of cases filed in Fiscal Year 2004, receiving 1,227 new cases, I am proud to report that the agency once again exceeded its performance goal for the fiscal year with a 108% overall disposition rate. Of particular significance is the fact that the agency's backlog of cases was reduced from an all time high of 840 as of June 2003 to just over 380 cases at the end of Fiscal Year 2004. The average age of disposed cases also dropped to just over 4 months.

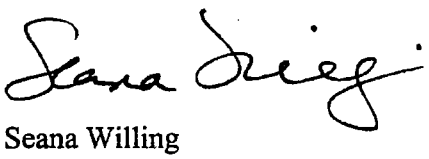
The Commission met 6 times in Fiscal Year 2004, considered 62 cases at informal hearings, and issued 60 disciplinary actions, ranging from 7 public sanctions, 21 private sanctions, and 7 orders of additional education. Additionally, 19 cases were resolved with the removal or resignation of 6 judges involved in formal proceedings and another 15 cases were resolved when judges under investigation signed Voluntary Agreements to Resign in Lieu of Disciplinary Action. The Commission made 1 suspension recommendation to the Texas Supreme Court, and voted 1 case into formal proceedings during the fiscal year. Finally, 5 judges were suspended from office by the Commission after being indicted for felony offenses or charged with misdemeanor offenses involving official misconduct.

Even with the increased number of filings, Commission staff was able to participate in approximately 40 judicial ethics presentations at the request of such entities as the Texas Center for the Judiciary, the Texas Association of Counties, the Texas Justice Court Training Center, the Texas Municipal Courts Education Center, the State Bar of Texas, and other local bar associations, legal groups, and law school programs. In addition, Commission staff handled more than 1,200 ethics calls from judges, judicial candidates, court staff, attorneys, legislators, government officials, law enforcement groups, the media, and others regarding issues relating to the application and enforcement of the Code of Judicial Conduct.

It is worth noting that in Fiscal Year 2004, staff turnover at the Commission reached an all time low, with the loss of only one employee. This consistency in the workforce, particularly in terms of the agency's investigative and legal staff, greatly contributed to the agency's ability to reduce its backlog by more than 50% and exceed its performance measure two years in a row.

On a final note, the Commission welcomed 3 new members in Fiscal Year 2004, with the appointment of the Honorable Michael Fields (Criminal County Court at Law Judge from Houston), the Honorable Rex Baker (Justice of the Peace from Dripping Springs), and the Honorable Monica Gonzalez (Municipal Court Judge from San Antonio) by the Texas Supreme Court. Although subject to Senate confirmation in 2005, the new members' terms will expire on November 19, 2009.

Sincerely,



Seana Willing
Executive Director
State Commission on Judicial Conduct

CHAIRMAN'S STATEMENT

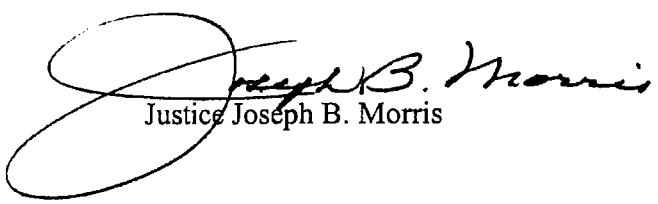
The State Commission on Judicial Conduct has continued its efforts for the last year to help Texas judges insure and preserve the integrity and independence of the judiciary. The Commission pursued its mission by offering guidance and education to Texas judges; by counseling judges who voluntarily participated in the Amicus Curiae Program; by reviewing and evaluating over 1200 allegations of improper judicial conduct; and by disciplining judges who the Commission found violated the Code of Judicial Conduct. During this period of time, it has been my privilege to participate in the Commission's work as its Chairman.

The Commission is composed of eleven Commissioners selected from the judiciary, the bar, and the public. The Commissioners are volunteers and serve without compensation. They are dedicated, hard working, and deserve everyone's praise. Three Commissioners who recently retired from the Commission warrant special recognition. They are Judge Martin Chiuminatto of Kingsville, Mr. Gilbert M. Martinez of Austin, and Judge Keith Baker of San Antonio. They have been models for those of us who continue to serve and for those who will serve in the future.

During the last year, the Commission engaged a new Executive Director, Ms. Seana Willing. Having previously served the Commission as its General Counsel, Ms. Willing now has responsibility for the day-to-day administration of the Commission's work. We all are well served by her commitment and dedication. She is ably assisted by an experienced legal staff, tireless investigators, and capable administrative personnel – fifteen in all – whose work is critical to the Commission.

The Commission's accompanying annual report reveals much of its work, but not all. What the statistics in the report do not show is the number of Texas judges who, on their own initiative, sought guidance and information about how to comply with the Code of Judicial Conduct in the performance of their judicial roles. Through contact with the Commission's Executive Director and attorneys, Texas judges made hundreds of informal inquiries about the application and interpretation of the Code. They each should be commended for their conscientiousness. And I encourage all Texas judges to use the Commission as a resource when they are presented with questions about the application of the Code of Judicial Conduct.

Next year will commemorate the Commission's fortieth anniversary. It has been an honor to serve as Chairman during one year of the Commission's long history.



Justice Joseph B. Morris

PHILOSOPHY

The members of the State Commission on Judicial Conduct and Commission staff take their duties to the citizens and judges of Texas very seriously. Neither the political affiliation, gender, ethnic or religious background, sexual orientation, socioeconomic status, geographical location, nor the position of a complainant or a judge are considered in the review of cases pending before the Commission. The Commission's ability to fulfill its constitutional mandate requires that each Commissioner and staff member act with honesty, fairness, professionalism and diligence.

The Commission reviews every allegation of misconduct made against a Texas judge. Each complaint alleging misconduct on its face is thoroughly investigated and analyzed by Commission staff before being presented to the Commissioners. This procedure is an essential safeguard to preserve the public's confidence in the integrity of the judicial process. Judges are held to the highest standards of ethical conduct, both on and off the bench, and the Commission and its employees strive to conduct themselves in a similar manner.

OVERVIEW OF THE COMMISSION

Authority of the Commission

The State Commission on Judicial Conduct was created in 1965 by an amendment to the Texas Constitution. The Commission is the independent state agency responsible for investigating allegations of judicial misconduct or permanent disability, and for disciplining judges.

The Commission's jurisdiction includes all sitting Texas judges, including municipal judges, justices of the peace, criminal magistrates, county judges, county courts-at-law judges, statutory probate judges, district judges, appellate judges, masters, associate judges, referees, retired and former judges who consent to sit by assignment, and judges pro tempore. The Commission has no jurisdiction over federal judges and magistrates, administrative hearing officers for state agencies or the State Office of Administrative Hearings, or private mediators or arbitrators. Although judicial candidates are required to comply with the Texas Code of Judicial Conduct, the Commission does not have the authority to sanction anyone who was not a sitting judge at the time an offense occurred. Therefore, violations of the canons by candidates for judicial office who were not judges at the time of the alleged misconduct are subject to review and appropriate action by other authorities such as the State Bar, the Attorney General, the Secretary of State, or the local District Attorney.

Members of the Commission

There are eleven members of the Commission, serving staggered six-year terms, as follows:

- Five judges appointed by the Supreme Court of Texas, one from each of the following court levels: appellate, district, county court-at-law, justice of the peace and municipal;
- Four citizen members who are neither attorneys nor judges, appointed by the Governor, and
- Two attorneys who are not judges, appointed by the State Bar of Texas.

By law, the appellate and district judges appointed to the Commission are from two different appellate districts in Texas; the justice of the peace, municipal court and county court-at-law judge members are selected at-large. The Texas Senate confirms all appointees. Commissioners meet approximately six times each year, and receive no pay for their service.

Laws Governing the Commission

The Commission is governed by Article V, Section 1-a, of the Texas Constitution, Chapter 33 of the Texas Government Code, and the Texas Procedural Rules for the Removal or Retirement of Judges. As part of the judiciary and as an entity having its own constitutional

and statutory provisions regarding confidentiality of papers, records and proceedings, the Commission is not governed by the Texas Public Information Act, the Open Meetings Act or the Texas Administrative Procedures Act.

Defining Judicial Misconduct

Article V, Section 1-a(6)A of the Texas Constitution defines judicial misconduct as the "willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice."

Judicial misconduct could arise from a violation of the Texas Constitution, the Texas Penal Code, the Texas Code of Judicial Conduct, or rules promulgated by the Supreme Court of Texas. It could occur through the judge's failure to cooperate with the Commission. Other examples of judicial misconduct include inappropriate or demeaning courtroom conduct, such as yelling, profanity, gender bias or racial slurs. It could be improper *ex parte* communications with only one of the parties or attorneys in a case, a public comment regarding a pending case, or a refusal by a judge to recuse or disqualify in a case where the judge has an interest in the outcome. It could involve ruling in a case in which the parties, attorneys or appointees are related within a prohibited degree of kinship to the judge. Judicial misconduct could occur through a judge's failure to cooperate with respect to his or her obligations arising from a Commission inquiry, or failure to abide by any provision of a voluntary agreement to resign in lieu of disciplinary action.

Judicial misconduct could also arise from out-of-court activities, including theft, driving while intoxicated, improper financial or business dealings, sexual harassment or official oppression, and is subject to the same review by the Commission.

Sources of Complaints and Allegations

The Commission has the duty to consider allegations from any source, including an individual, a news article or information received in the course of an investigation. Complaints may be made anonymously, or the complainant may request confidentiality; however, in those instances, the Commission may be restricted in its ability to fully investigate the allegations.

Commission Limitations

The Commission cannot exercise appellate review of a case or change the decision or ruling of any court, nor can the Commission intervene in a pending case or proceeding. For example, if the Commission finds that a judge has committed misconduct, the Commission can only issue sanctions against the judge or seek the judge's removal from the bench. However, even removal would not change the judge's ruling in the underlying case. Only the appellate process is empowered to change the decision of a court.

Likewise, the Commission cannot provide individual legal assistance or advice to a complainant. The Commission cannot remove a judge from a case. The Commission cannot award damages or provide monetary relief to complainants.

Commission Investigations and Actions

Cases are reviewed, analyzed and investigated by the Commission staff. An investigation may include a letter of inquiry to the judge, a review of court records, or interviews with the complainant, attorneys and other witnesses. The Commission then considers the results of the investigation in its decision. The Commission has several options available when deciding whether to take action on a case. The types of actions include dismissal, sanction, suspension, acceptance of a voluntary agreement to resign from judicial office in lieu of disciplinary action, and formal proceedings.

Commission Organization and Staff

The Commission has seventeen authorized staff positions (FTEs). Commission staff currently includes the Executive Director, four attorneys, one legal assistant, three investigators, and five administrative support people. All Commission staff members are full-time State employees.

The Commission's legal staff, which consists of attorneys, a legal assistant and investigators, is responsible for the evaluation and investigation of complaints. The investigators are primarily responsible for reviewing and evaluating new complaints and conducting in-house and on-site investigations. The legal assistant is responsible for making preliminary investigations, performing legal research, and assisting the attorneys in the prosecution of disciplinary proceedings. The attorneys are responsible for responding to ethics calls, speaking on judicial ethics at educational/training seminars, investigating allegations of judicial misconduct or incapacity, and prosecuting disciplinary cases before the Commission, the Texas Supreme Court and its appointees.

The Commission staff attorneys serve as examiners, or trial counsel, during formal proceedings and on appeals from Commission actions. The examiner is responsible for preparing cases for hearing and presenting the evidence that supports the charges before the Commission or a special master. The examiner handles briefing regarding special masters' reports, and presents cases orally and in writing in hearings before the Commission and appointees of the Texas Supreme Court. In certain cases, the Commission may employ special counsel, chosen from distinguished members of the bar, to assist staff in preparing and presenting these cases.

The Executive Director heads the agency and reports directly to the Commission. The Executive Director is also the primary liaison between the Commission and the judiciary, legislators, the public and the media.

Amicus Curiae

Amicus Curiae ("*Amicus*") is a judicial disciplinary and education program that was initially funded by the Texas Legislature in 2001. Before the Commission started this program, complaints of judicial misconduct relating to impairment, such as drug or alcohol abuse or mental illness, were sanctioned or dismissed if unfounded. The underlying impairment was never addressed. *Amicus* now affords a third option under the Commission's

authority to order additional training and education to a judge found to have violated a canon of judicial conduct. *Amicus* offers assistance to the judge to address the underlying personal impairment causally connected to the misconduct. The one advantage *Amicus* offers over other similar programs such as the Texas Lawyers Assistance Program operated by the State Bar of Texas is its ability to assist all judges, attorney and non-attorney alike.

Although the confidential referral to *Amicus* by the Commission through the disciplinary process does not shield the judge from any sanction that the Commission deems appropriate, the Commission recognizes that not all impairment issues result in misconduct. In order to reach out to those judges who may be suffering in silence and who may not be the subject of a complaint as a result of their impairment, *Amicus* offers a new self-referral component to its program, which affords judges an opportunity to seek assistance, in confidence, outside the disciplinary process.

Outreach and Education

In 2004, the Executive Director and Commission attorneys made close to forty (40) presentations at judicial training courses, bar conferences and court staff workshops, describing the Commission and discussing various forms of judicial misconduct.

Ethics Calls

In 2004, the Executive Director, staff attorneys and investigators answered more than 1,200 telephone calls from judges, judicial candidates, attorneys, Legislators, the media and private citizens regarding judicial ethics inquiries. Callers are cautioned that Commission staff cannot issue an opinion on behalf of the Commission, and that the Commission is not bound by any comments made during the conversation. In many cases, the caller's question is researched before the call is returned so that the specific canon, statute, rule or ethics opinion can be identified. When appropriate, staff will send the caller a Complaint Form (in English or Spanish) and other relevant material. In some instances, staff may refer callers to other resources or agencies to better address their concerns.

Commission Website

The Commission website is located at www.scjc.state.tx.us. The website provides downloadable complaint forms in English and Spanish. The website also offers bilingual answers to frequently-asked questions regarding the Commission, such as its composition, structure and jurisdiction; the judicial complaint process; a description of the range of decisions the Commission can make, from dismissal to sanction; and explanations of the procedures for a judge to appeal the Commission's decision, and for a complainant to seek the Commission's reconsideration. Further, the website provides statistical information about the Commission and updated sanctions, resignations, suspensions, and Review Tribunal Opinions.

Also included are the Commission's governing provisions: Code of Judicial Conduct; Texas Constitution Article V, Section 1-a; Chapter 33, Texas Government Code; and the Texas Procedural Rules for the Removal or Retirement of Judges.

Public Information

The availability of information and records maintained by the Commission is governed by Rule 12 of the Texas Rules of Judicial Administration, the Texas

Constitution and the Texas Government Code. Commission records are not subject to public disclosure pursuant to the Public Information Act (formerly the Open Records Act) or the Freedom of Information Act.

Generally, Commission records are confidential, with the following exceptions:

- Constitution: Article V, Section 1-A(10) of the Texas Constitution provides that "All papers filed with and proceedings before the Commission or a Master shall be confidential, unless otherwise provided by the law..."
- Government Code:
    - In the event the Commission issues a public sanction against a judge, Section 33.032 of the Texas Government Code provides for the release of information previously withheld as confidential.
    - Also under this Section, suspension orders and related proceedings as well as voluntary agreements to resign in lieu of disciplinary proceedings are available to the public.
    - Section 33.032 also authorizes the release to the public of papers filed in a formal proceeding upon the filing of formal charges.
- Judicial Administration: Rule 12 of the Texas Rules of Judicial Administration provides for public access to certain records made or maintained by a judicial agency in its regular course of business *but not pertaining to its adjudicative function.* Commission records relating to complaints, investigations, and its proceedings are not judicial records and are not subject to public disclosure pursuant to Rule 12.

When the Commission takes action on a complaint, whether dismissing it, issuing a private or public sanction, accepting a voluntary agreement to resign in lieu of disciplinary action, or voting formal proceedings, the complainant is notified in writing. However, the Texas Government Code requires that the Commission omit the judge's name from the notice to the complainant, unless a public sanction has been issued. The complainant has some privacy rights as well: at the complainant's request, his or her name may be withheld from the judge and kept confidential.

Additionally, the Constitution provides that in instances where issues concerning either a judge or the Commission have been made public by sources other than the Commission, the Commission may make a public statement. In such a situation, the Commission determines whether the best interests of a judge or the public will be served by issuing the statement.

THE COMPLAINT PROCESS

Introduction

Each complaint stating an allegation of judicial misconduct is thoroughly reviewed, investigated and analyzed by the Commission staff. Complaints must be filed with the Commission in writing. Complaints sent by fax or through e-mail are not accepted.

Although it is not mandatory that a complainant submit his or her allegation on the Commission's complaint form, the specific information sought is essential to the efficient handling of a complaint. Complaint forms are available in English and Spanish from the following sources:

- Download from the Commission's website at www.scjc.state.tx.us;
- Telephone requests to the Commission at (512) 463-5533.

The Commission may also initiate the complaint process itself upon a review of information from the media, court documents, the Internet or other sources. The complainant may request that the Commission keep his or her identity confidential, and anonymous complaints are also accepted.

When a complaint is filed, the Commission sends the complainant an acknowledgment letter and staff begins its investigation and analysis of the allegations. The complainant may be asked to provide additional information or documents. Staff then reviews each allegation or complaint thoroughly. In some cases, legal research may be conducted, and witnesses or the judge may be contacted. For complex matters, an attorney or investigator may travel to the judge's county for further investigation and interviews.

When the investigation is completed, the case is presented to the Commission for its consideration. In some cases, the Commission may invite the judge to appear and discuss the complainant's allegations; under certain circumstances, the Commission may invite the complainant to appear. Based on the specific constitutional provisions, statutes and canons under which the Commission operates, it considers and votes on each matter on a case-by-case basis.

If the Commission votes to issue a public sanction, the appropriate order is prepared and distributed to the subject judge and the complainant; the order is then publicly disseminated as required by law to ensure public awareness. If, however, the Commission votes to issue a private sanction, the appropriate order is prepared and tendered to the subject judge, and the complainant is notified by letter of the Commission's action. Because the Commission is controlled by constitutional and statutory provisions that prohibit the release of information regarding investigation and resolution of a case, no other details will be released to the public. However, in cases where a judge has voluntarily agreed to resign in lieu of disciplinary action, that agreement becomes public upon the Commission's acceptance of it, and the complainant is so notified.

Likewise, whenever the Commission suspends a judge after he or she has been indicted for a criminal offense, or charged with a misdemeanor involving official misconduct, the Commission releases to the public the order of suspension and all records related to the proceedings.

Commission Decisions

Commission members review, deliberate and vote on each complaint. This may result in a dismissal, a public or private order of additional education either alone or in combination with a public or private sanction, a public or private admonition, warning or reprimand, the acceptance of a voluntary agreement to resign from judicial office in lieu of disciplinary action, or formal proceedings for removal or retirement of the judge from the bench. If appropriate, the Commission may defer its action and refer the judge to the *Amicus Curiae* Program. If the judge appeals a decision of the Commission, the Texas Supreme Court appoints three appellate judges to serve as a Special Court of Review. That Court's final decision-making authority includes dismissal, affirmation of the Commission decision, imposition of a greater or lesser sanction, or the initiation of formal proceedings. The decision of the Special Court of Review is final and may not be appealed.

The Commission's decisions and actions in responding to allegations or complaints of judicial misconduct fall into one of the following categories:

1. Administrative Dismissal Report

A case is dismissed administratively when a complainant's writing or claim fails to state an allegation of judicial misconduct, addresses a dispute over a judge's discretionary rulings that may only be resolved on appeal, or identifies the wrong judge or a person over whom the Commission has no jurisdiction. In addition, gratuitous claims of misconduct that are unsupported by any facts or evidence may be administratively dismissed. In letters of dismissal sent to these complainants, the Commission provides a specific explanation for the administrative dismissal.

2. Dismissal

The Commission may dismiss a case after conducting a review and investigation of the allegations. Reasons for these dismissals include insufficient or no evidence of misconduct, the judge demonstrated that he or she took appropriate actions to correct the conduct at issue, or the conduct, though problematic, did not rise to the level of sanctionable misconduct. In letters of dismissal sent to these complainants, the Commission provides a specific explanation for the dismissal, and describes the steps the complainant can take for the Commission to reconsider its decision.

3. Order of Additional Education

Legal and procedural issues are often complex, so it is not surprising that some judges take judicial action that may exceed their authority or that is contrary to procedural rules. In these situations, the Commission may find that the judge has demonstrated a deficiency in a particular area of the law warranting an order of education. The Commission then contacts the appropriate judicial training center, where the subject judge may attend a particular training program or a mentor judge may be appointed for one-on-one instruction with the subject judge, to be completed within a specified time on particular subjects. The mentor judge then

reports to the Commission on the subject judge's progress. The Commission may also order the judge to obtain education on other issues, such as anger management, gender sensitivity or sexual harassment. The Commission may issue an order of education alone or as part of a private or public sanction.

4. Private or Public Sanction

Sanctions are issued by the Commission when sufficient evidence is provided that supports a finding of judicial misconduct. The most severe disciplinary action available to the Commission is a *public censure*, issued only after a case has been voted into formal proceedings by the Commission. If, after a public fact-finding trial, the Commission determines that the underlying allegations of the complaint are true but do not support a recommendation for removal from office, a *censure* is issued as a public denunciation of the judge's conduct.

The next most severe sanction is a *public reprimand.* A *reprimand* is the most severe sanction available to the Commission (unless formal proceedings are voted as described herein). A less severe sanction is a *public warning*, followed by a *public admonition.* A *warning* puts the judge on notice that the actions identified in the sanction are improper. An *admonition* is the lowest level sanction. As noted above, sanctions may be public or private, and may be combined with orders of education.

A judge may appeal any sanction other than a *public censure* to a Special Court of Review.

If a *public sanction* or *censure* is issued, all information considered by the Commission, including the judge's name, is made public. Public sanctions are issued not only to identify the specific conduct, but to educate judges that such conduct is inappropriate. This also insures that the public is made aware of actions that violate the Code of Judicial Conduct. When a *private sanction* is voted, the judge's name and all information considered by the Commission are kept confidential.

5. Suspension

The Commission has the power to suspend a judge from sitting on the bench, with or without pay, after the judge has been either indicted by a grand jury for a felony, or charged with a misdemeanor involving official misconduct. The suspended judge has the right to a post-suspension hearing before one or more of the Commission members or the Executive Director, as designated by the Commission Chair.

In cases other than for alleged criminal behavior, the Commission, upon the filing of a sworn complaint and after giving the judge notice and an opportunity to appear before the Commission, may recommend to the Supreme Court of Texas that the judge be suspended from office, for persistent violation of rules promulgated by the Supreme Court, incompetence in performing the duties of office, willful violation of the Code of Judicial Conduct, or willful and persistent conduct that is clearly inconsistent with the proper performance of his or her duties, or that casts public discredit on the judiciary or the administration of justice.

6. Voluntary Agreement to Resign

In some cases, a judge against whom a complaint has been made may decide to resign in lieu of disciplinary action. In that event, the judge may tender to the Commission a voluntary agreement to resign from judicial office. Upon the Commission's acceptance, the agreement is made public and the judge vacates the bench. The agreement and any agreed statement of facts relating to it are admissible in subsequent proceedings before the Commission. While the agreement is public, any records relating to the underlying case remain confidential and may only be released to the public if a judge violates a term of the agreement.

7. Formal Proceedings

In certain circumstances, the Commission may decide that a complaint against a judge is so severe that it should be handled as a formal proceeding. The Commission itself may conduct such a fact-finding hearing or it may ask the Supreme Court of Texas to appoint a Special Master (who must be a sitting or retired district or appellate judge) to hear the matter. Such proceedings are governed by the Texas Rules of Civil Procedure and the Texas Rules of Evidence to the extent practicable.

Although there is no right to a trial by jury in a formal proceeding, the judge is afforded certain other rights under the Texas Procedural Rules for the Removal or Retirement of Judges, including the following:

- To be confronted by the judge's accusers;
- To introduce evidence;
- To be represented by counsel;
- To examine and cross-examine witnesses;
- To subpoena witnesses; and
- To obtain a copy of the reporter's record of testimony.

If the formal proceeding has been conducted before a Special Master, he or she reports the findings of fact to the Commission. If either party files objections to the Master's Report, the Commission will hold a public hearing to consider the report of the Special Master and any objections. The Commission may adopt the Special Master's findings in whole or in part, modify the findings, totally reject them and enter its own findings, or order a hearing for the taking of additional evidence.

After adopting findings of fact, the Commission issues its conclusions of law. The Commission may dismiss the case, issue a public censure, or recommend removal or involuntary retirement to a seven-member Review Tribunal appointed by the Supreme Court of Texas. The Commission itself cannot remove a judge; only the Review Tribunal can order a judge removed from the bench. The Review Tribunal may also enter an order prohibiting the judge from ever holding a judicial office again.

The judge may appeal the decision of the Review Tribunal to the Texas Supreme Court.

Appellate Review of Commission Action

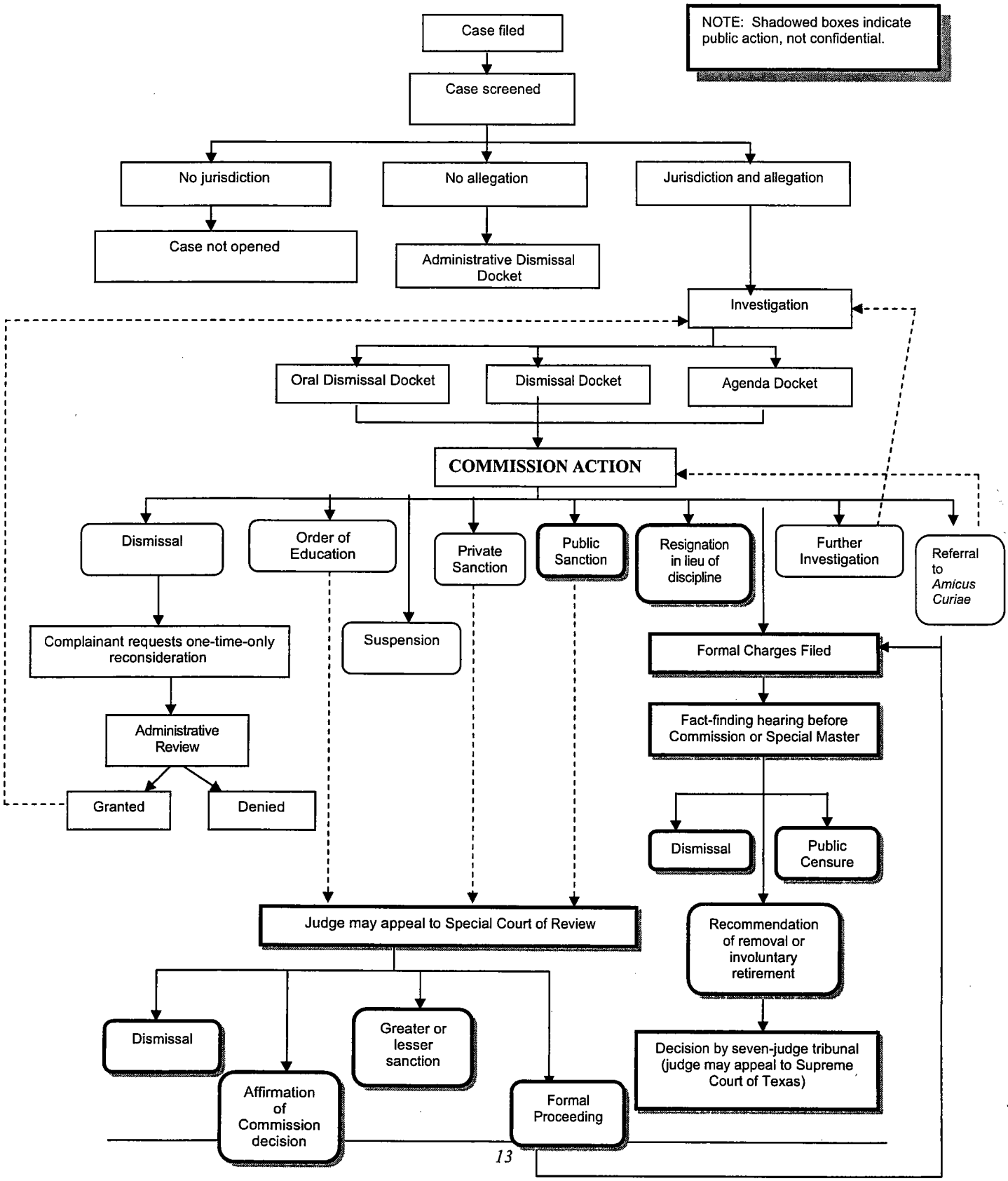
Although a public censure cannot be appealed, a judge may appeal the Commission's issuance of any other public or private sanction or order of additional education within thirty (30) days of the date the Commission issues the sanction by filing a written notice with the Chief Justice of the Supreme Court of Texas and requesting the appointment of three appellate justices to act as a Special Court of Review.

Within fifteen (15) days after the Special Court of Review is appointed, the Commission must furnish the subject judge and each justice on the Special Court of Review with a "charging document," which includes a copy of the sanction issued, as well as any additional charges to be considered in the *de novo* proceeding. All other papers, documents and evidence that were considered by the Commission are included. Once the judge has filed his or her appeal, these materials become public.

A trial *de novo* is held within thirty (30) days after the charging document is filed. The Special Court of Review considers the case from the beginning, as if the Commission had taken no previous action. The Texas Rules of Civil Procedure apply, except that the judge is not entitled to a jury trial. All documents filed and evidence received in the appeals process are public.

The Special Court of Review may dismiss or affirm the Commission's decision, impose a greater or lesser sanction, or order the Commission to file formal proceedings against the subject judge for removal or involuntary retirement. The decision of the Special Court of Review is final.

COMPLAINT PROCESS



AMICUS CURIAE PROGRAM

The *Amicus Curiae* program ("*Amicus*" herein), developed in 2001, continues to identify and assist members of the judiciary who have impairments and to provide a confidential resource for those judges to obtain help.

Amicus Curiae, which translates as "friend of the court," is the first program of its kind in the United States. The program grew out of the Commission's awareness and concerns that certain issues of misconduct resulted from underlying problems related to alcohol or drug abuse, addiction, or mental or emotional disorders. Unlike most employee assistance programs, *Amicus* is unique in that it is not designed to provide direct services. Instead, *Amicus* helps locate resources to identify and treat impairments that may be affecting those judges' personal lives and their performance on the bench.

Three distinguished professionals serve as members of the *Amicus* Board of Directors, overseeing the development and operation of the program:

- Justice Robert Seerden, Corpus Christi, is the retired Chief Justice of the 13th Court of Appeals; he is of counsel at Hermansen, McKibben, Woolsey & Villarreal, L.L.P. in Corpus Christi;
- Dr. Lawrence Schoenfeld, Ph.D, San Antonio, is Director of both the Clinical Psychology Residency and Fellow Programs at the University of Texas at San Antonio Health Sciences Center, and
- Judge Bonnie Crane Hellums, Houston, is Judge of the 247th District Court in Houston. Judge Hellums hears family law cases and has initiated one of Houston's first Drug Courts to deal with some of the impairment issues she routinely sees in her court.

Funding for *Amicus* was initially provided through a grant from the Texas Center for the Judiciary, through the Texas Court of Criminal Appeals. The Texas Legislature initially appropriated funds to *Amicus* on September 1, 2001. Those funds enabled the Commission to hire a program manager to operate the program with the Board's oversight. Developing program guidelines, acquiring educational reference materials, instituting a network of mentor judges, and reviewing similar programs for other professions are the continuing goals of the board. The funding for the program currently comes from an interagency contract with the Court of Criminal Appeals and expires on August 31, 2005.

A judge whose conduct has been brought to the attention of the Commission through the filing of a complaint may be offered the opportunity to participate in *Amicus* once the Commission makes a determination that the judge might benefit from such

participation. In the event that the Commission should make such a referral, the judge's participation in *Amicus* remains contingent upon the judge's voluntary submission to the program and the judge's acceptance into the program by the *Amicus* Board following an appropriate evaluation. At the discretion of the Commission, discipline of the judge may be temporarily diverted while the judge is an *Amicus* participant. A judge's progress while in the program is regularly reported to the Commission. However, any judge may independently contact the *Amicus* Program Manager directly and request confidential assistant outside the Commission's disciplinary process.

The Commission's major consideration in whether a judge should be referred to *Amicus* for evaluation is whether the public can be assured that all judges maintain the high standards of conduct required of them by the Texas Code of Judicial Conduct and Texas Constitution.

STATISTICAL ANALYSIS

An outline of the statistical activity for the Commission through the end of fiscal year 2004 is shown in **Table 1** immediately following this section. Graphic representations of the data are also presented in **Figures 1** through **6** to further illustrate the activities of the Commission.

As of April 2004, according to records made available through the Office of Court Administration, approximately 3,579 judges were under the jurisdiction of the State Commission on Judicial Conduct. **Figure 1** illustrates the Texas judiciary by the total number of judges and by the number of judges in each category. **Figure 2** shows the number and percentage of cases filed with the Commission against each judge type. **Figure 3** shows the number and percentage of disciplinary actions taken by the Commission against each judge type. Although district court judges accounted for close to half of the cases filed in fiscal year 2004, this category of judge received twelve (12%) percent of the discipline issued by the Commission this past year (Note: district court judges accounted for only 3% of disciplinary actions issued in fiscal year 2003). Disciplinary actions against justices of the peace remained high, with this category of judge receiving over sixty (61%) percent of sanctions and other disciplinary actions issued during the year.

Figure 4 illustrates by number and percentage the various sources of cases closed in fiscal year 2004. By the end of the fiscal year approximately 1,328 cases were closed. A majority of these cases were filed by litigants, their family and friends, with those filed by criminal defendants, including traffic defendants and inmates, accounting for thirty-two (32%) percent of closed cases this past fiscal year. **Figure 5** compares the number of cases filed with the Commission to the total number of cases disposed of by the Commission for fiscal years 2001 through 2004. It is worth noting that in fiscal year 2004, the Commission had an overall disposition rate of 108 percent.

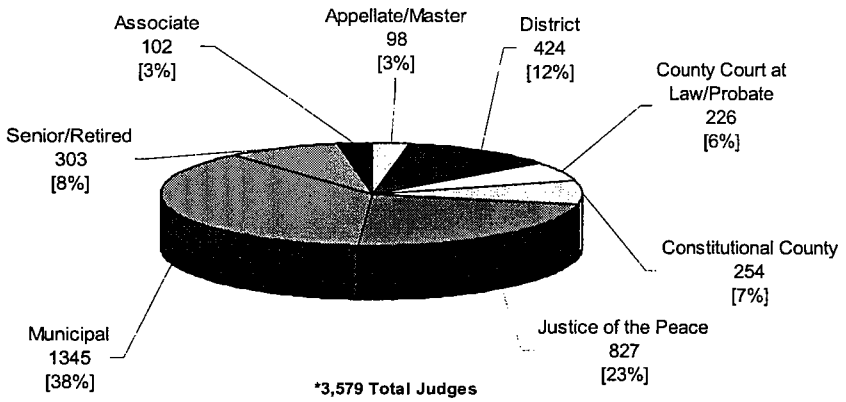
In fiscal year 2004, seventy-seven (77) disciplinary actions were taken against Texas judges. The Commission disposed of thirty-five (35) cases through public sanction, private sanction, orders of additional education or a combination of sanction with an order of additional education. In addition, seventeen (17) cases were disposed of through voluntary agreements to resign from office. Interim actions, such as suspensions, *Amicus* referrals, and formal proceedings, accounted for eight (8) of the disciplinary actions taken in fiscal year 2004. A comparison of public discipline, private discipline and interim actions taken by the Commission in fiscal years 2001 through 2004 is shown in **Figure 6**.

Table 1: Commission Activity

	FISCAL YEAR 2001	FISCAL YEAR 2002	FISCAL YEAR 2003	FISCAL YEAR 2004
Cases Pending (Beginning FY/Ending FY)	417/629	629/828	828/500	500/382
Cases Filed	1123	1045	1055	1227
Total Number Of Cases Disposed	911	828	1395	1328
% of Cases Disposed	81%	79%	132%	108%
Average Age of Cases Disposed	4.4 months	7.1 Months	5.4 Months	4.04 Months
Disciplinary Action (total)	80	79	59	77
Cases Disposed through:				
Criminal Conviction	0	0	0	0
Review Tribunal Order	0	0	0	17
Informal Resignation Agreement	3	0	0	0
Voluntarily Agreement to Resign in Lieu of Disciplinary Action	0	14	19	17
Sanction:				
Public Censure	0	0	1	0
Public Censure and Order of Additional Education	0	0	2	0
Public Reprimand	5	2	7	2
Public Warning	3	6	2	1
Public Admonition	12	8	4	4
Public sanction and Order of Additional Education	3	3	4	0
Private Reprimand	3	2	0	3
Private Warning	7	3	5	1
Private Admonition	6	4	5	11
Private sanction and Order of Additional Education	1	3	3	6
Public Order of Additional Education	0	0	0	0
Private Order of Additional Education	21	6	4	7
Interim Disciplinary Action:				
Order of Suspension [15(a)]	4	4	0	6
Recommendation of Suspension to Supreme Court [15(b)]	0	7	2	1
Formal Proceedings Voted	12	17	1	1
Amicus Referral		2	0	0
Dismissals	831	749	1328	1259
Requests for Reconsideration Received	133	43	173	212
Reconsideration Granted	6	0	10	12
Reconsideration Denied	100	39	163	200
Pending	27	4	0	0
Cases Appealed to Special Court of Review	0	1	1	0
Cases Set for Informal Hearing	86	78	71	62
Public Statements Issued	0	1	1	0

Updated 9/8/04

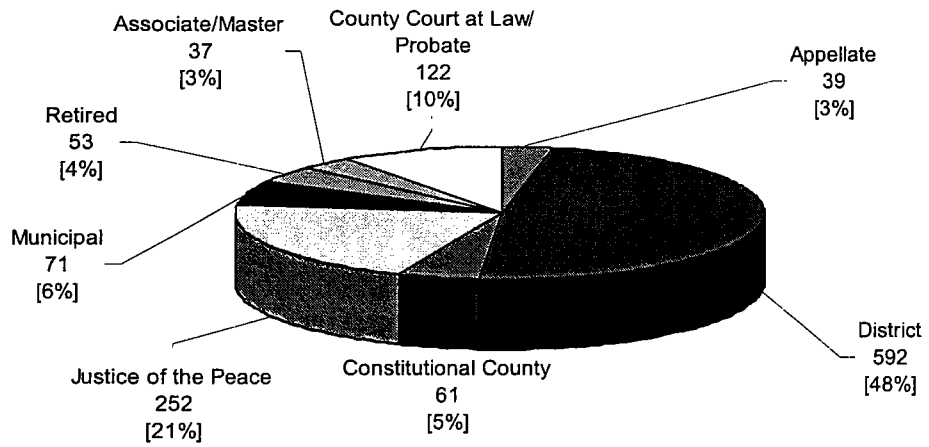
Fig. 1 Total Number of Texas Judges



*3,579 Total Judges

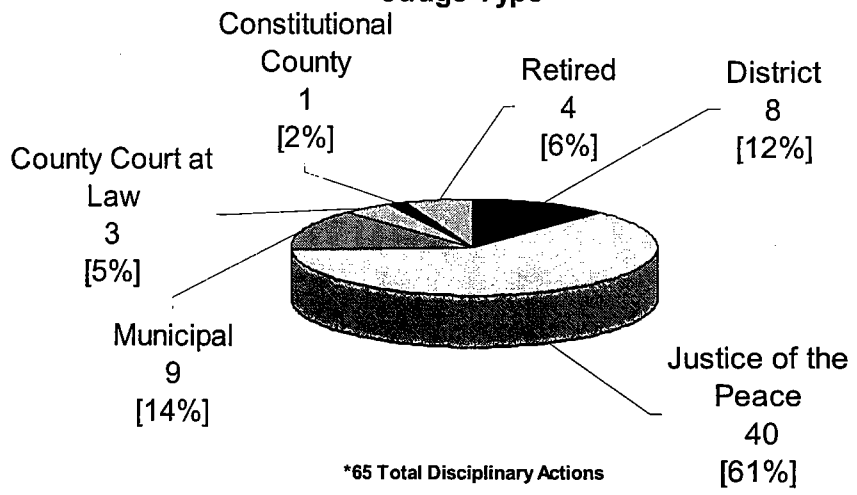
Source: Office of Court Administration (April 2004)

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



***1,227 Total Complaints Filed**

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



Note 1: No Probate or Associate Judges received discipline in FY 2004.
Note 2: Some judges received a sanction involving more than one case.

Fig. 4 Number of Cases Disposed By Complainant Type

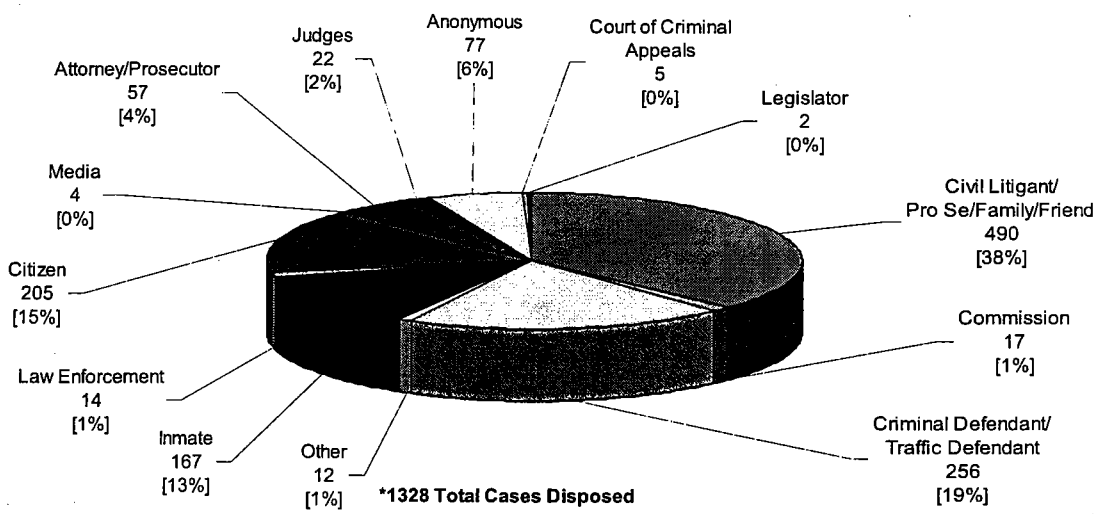


Fig. 5 Cases Filed and Disposed (FY 2001 - FY 2004)

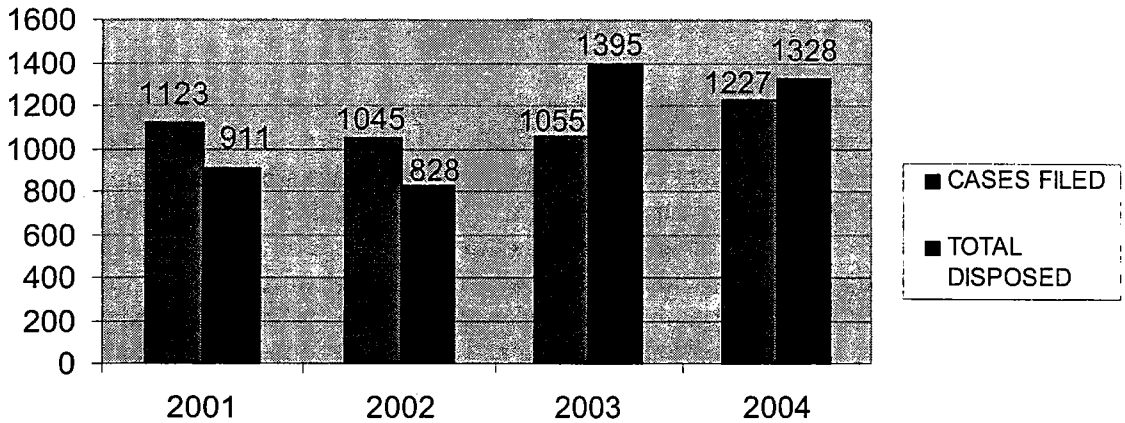
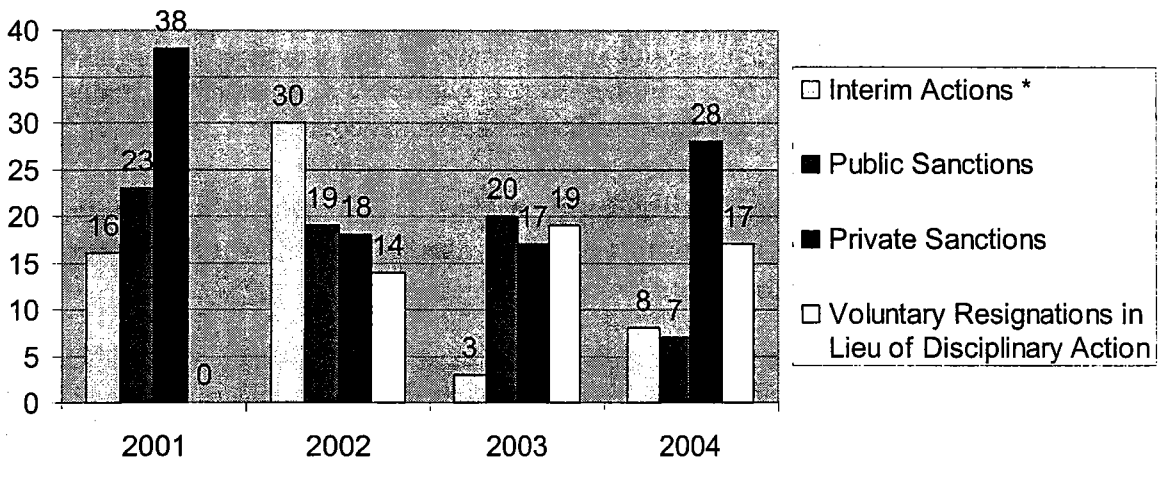


Fig. 6 Commission Activity (FY 2001-2004)



*Interim Actions include: Orders of Suspension, Recommendations of Suspension to Supreme Court, Formal Proceedings Voted, and *Amicus Curiae* Referrals.

EXAMPLES OF IMPROPER JUDICIAL CONDUCT

The following are examples of judicial misconduct that resulted in disciplinary action by the Commission in fiscal year 2004. These are illustrative examples of misconduct and do not represent every disciplinary action taken by the Commission last year fiscal year 2004. The summaries below are listed in relation to specific violations of the Texas Code of Judical Conduct, the Texas Constitution, and other statutes or rules. They are also listed in descending order of the severity of the disciplinary action imposed, and may involve more than one violation. The full text of any public discipline are published on the Commission website and may be requested by contacting the Commission.

These sanction summaries are provided with the intent to educate and inform the judiciary and the public regarding misconduct that the Commission found to warrant disciplinary action in fiscal year 2004. The reader should note that the summaries provide only general information and omit mitigating or aggravating facts that the Commission considered when determining the level of sanction to be imposed. Additionally, the reader should not make any inferences from the fact situations provided in these summaries. It is the Commission's sincere desire that providing this information will protect and preserve the public's confidence in the integrity, impartiality and independence of the judiciary and further assist the judiciary in establishing, maintaining and enforcing the highest standards of judicial and personal conduct.

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

- The judge unilaterally authorized the release of a criminal defendant on personal bond, after the defendant had been magistrated and had his surety bond set at $15,000 by another justice of the peace. The judge took such action, after being notified of the defendant's incarceration by the defendant's coach, with whom the judge was acquainted. [Violations of Article 17.09, Section 3 of the Texas Code of Criminal Procedure and Canons 2A, and 2B, Texas Code of Judicial Conduct] *Private Order of Additional Education of a Justice of the Peace* (04/08 /04).
- A landlord filed an eviction suit in the judge's court against a tenant, although the rental property that was the subject of the suit was not located in the judge's precinct. The judge conducted an "informal hearing" at which only the tenant appeared, and the judge found in favor of the landlord and ordered the tenant to vacate the property. The next month, the judge granted to the landlord a default judgment for back rent. [Violation of Canon 2A, Texas Code of Judicial

Conduct.] *Private Order of Additional Education of a Justice of the Peace* (06/25/04).

- The judge failed to obtain the required hours of mandatory judicial education for fiscal year 2003, and failed to obtain a waiver of the requirement. [Violation of Canons 2A and 3B(2), Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace* (06/25/04).

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

- A traffic defendant approached Judge A, a justice of the peace, in his chambers and asked him to discuss the ticket with Judge B, a municipal judge from another city in whose court the defendant's traffic citation was pending. Judge A telephoned Judge B and attempted to discuss the ticket. At the defendant's request, Judge A asked Judge B to grant the defendant deferred adjudication. Judge B refused to discuss the matter with Judge A, and told him the call was inappropriate. During this telephone conversation, Judge A told Judge B that "we judges help each other," or words to that effect. In his written responses to and appearance before the Commission, Judge A identified the defendant as a "constituent," and stated that it is "common practice" for area judges to call each other "for information, options and/or explanations, when requested by citizens." The judge used the influence of his office to advance the private interests of himself or others. [Violation of Canon 2B, Code of Judicial Conduct.] *Public Admonition of Alonzo Villarreal, Justice of the Peace* (06/25/04).

- For the purpose of lending the prestige of his office, the judge sent a letter on judicial letterhead to attorneys who were involved with a matter to which the judge had a personal interest threatening them and their firm with a lawsuit. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Private Reprimand of a District Judge* (04/27/04)

- The judge used the prestige of his judicial office to instigate a groundless, bad-faith criminal investigation of a constable. The judge's son had been sued in small claims court, and the constable made several attempts to serve the judge's son. The judge then filed a criminal complaint against the constable, and alleged that the constable committed perjury by making an affidavit in connection with his efforts to serve the judge's son. [Violation of Canon 2B, Texas Code of Judicial Conduct.] *Private Reprimand of a Justice of the Peace* (07/14/04).

- The judge misused the powers of his judicial office by causing a fictitious notice to a County Commissioner, a critic of how the judge ran his court administratively, leading the Commissioner to believe that he had been charged

with a criminal offense and was facing possible arrest. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Private Warning of a Justice of the Peace* (10/21/03)

- The judge allowed an attorney with whom he had a close relationship to continue to appear before him, even after another judge had recused the judge from a case because of the relationship. Further, the judge placed undue pressure on his court staff when he requested that they pledge to use their personal time to assist him with his re-election campaign. [Violation of Canon 2B, Texas Code of Judicial Conduct.] *Private Admonition of a District Judge* (04/27/04).
- The judge sent an e-mail to various individuals, including other judges and attorneys, soliciting donations for the Multiple Sclerosis Society. The judge's name and title appeared in the heading of the e-mail. [Violation of Canon 2B, Texas Code of Judicial Conduct.] *Private Admonition of a District Judge* (08/13/04).

CANON 3B(1): A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.

- The judge improperly adjudicated a matter in which her husband was the defendant, and subsequently adjudicated a matter in which a defendant was an employee of business in which the judge has an ownership interest. [Violation of Canons 2B and 3B(1) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Justice of the Peace* (11/28/03)
- The judge inappropriately adjudicated a matter in which his grandson was the defendant. Additionally, the judge, on an infrequent basis, set bonds over the telephone. [Violation of Canons 2B, 3B(1) and 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Justice of the Peace* (11/28/03)
- The judge failed to accord an attorney and her client a hearing in a small claims suit for more than a year, despite repeated requests in writing and by telephone to the judge. The judge conducted court proceedings in an undignified manner when he eventually heard the case while barefooted, and wearing a T-shirt and shorts. [Violation of Canons 3B(1), 3B(4) and 3B(8), Texas Code of Judicial Conduct.] *Private Admonition of a Justice of the Peace (*10/08/03*).*

CANON 3B(2): A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

- The judge displayed a failure to maintain competence in the law in handling certain traffic cases; specifically, the "administrative fee" the judge charged was an inappropriate "special expense" and the judge ordered a litigant to pay both fine and a deferred fee. Additionally, the judge failed to be patient, dignified, and

courteous to litigant who appeared before her. [Violation of Canons 3B(2) and 3B (4) of the Texas Code of Judicial Conduct and Art. 45.051c of the Texas Code of Criminal Procedure]. *Public Admonition of Hazel Lewis, Former Justice of the Peace* (10/28/03).

- The judge was unaware that she failed to follow established procedures in handling post-trial matters in a civil lawsuit. [Violation of Canon 3B(2) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Justice of the Peace.* (03/19/04)
- The judge improperly handled several aspects of a civil suit filed in the judge's court. She failed to timely issue citations, failed to document the sending of hearing notices, and improperly dismissed the lawsuit at a pretrial conference. [Violation of Canon 3B(2), Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace* (02/02/04).
- The judge failed to obtain the required hours of mandatory judicial education for fiscal year 2003, as required by Rule 2a(2) of the Texas Rules of Judicial Education. [Violation of Canon 3B(2), Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Retired District Judge* (08/31/04).

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

- In one case, although the judge explained to a *pro se* litigant that he could not engage in an *ex parte* discussion with her, he asked her "Are you calling me a liar?" and continued to respond to her questions and criticisms. In another case, the judge admonished a divorce litigant in open court for berating the litigant's own attorney at the courthouse; the judge later testified that he felt the litigant, who was employed as a deputy sheriff in another county, did not exhibit proper behavior as a peace officer. Two years later, the judge's bailiff told the judge that the same litigant and his mother were in court for the divorce, and had called the judge's court "crooked." The judge chastised the litigant and his mother for criticizing the court. He also complained to the litigant's supervisor at the sheriff's department about the litigant's past and present behavior; the litigant was officially reprimanded. The judge conducted court proceedings in an undignified manner, and by reporting the divorce litigant to his superiors, the judge was retaliating against him for firing his attorney two years earlier. [Violation of Canon 3B(4), Code of Judicial Conduct.] *Private Admonition of a District Judge* (4/08/04).
- During a summary judgment hearing in a suit on a note, the judge failed to accord plaintiffs respect and dignity when he disparaged them in court by comparing them and their legal claims to "Scrooge and Marley." [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a District Judge* (01/15/04)

- The judge lost his temper and used intemperate language while attending a public meeting in his official capacity. [Violation of Article V, Section 1-a(6)A, Texas Constitution and Canon 3B(4), Texas Code of Judicial Conduct.] *Private Admonition of a District Judge* (04/08/04).
- The judge failed to accord an attorney and her client a hearing in a small claims suit for more than a year, despite repeated requests in writing and by telephone for him to provide a hearing in the case. Further, the judge conducted court proceedings in an undignified manner when he heard the case while barefooted and wearing a T-shirt and shorts. [Violation of Canons 3B(1), 3B(4), and 3B(8) of the Texas Code of Judicial Conduct.] *Private Admonition of a Justice of the Peace (*10/21/03)
- The judge made inappropriate comments toward a county employee who worked under his direct supervision causing that employee to file a sexual harassment claim against the judge. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a County Judge* (10/21/03)

CANON 3B(5): A judge shall perform judicial duties without bias or prejudice.

- The judge filed a grievance against defense counsel which was motivated, in part, by his expressed desire to get "aggressive" with counsel. Additionally, the judge ordered an additional, more onerous bond condition for one of defense counsel's clients over two weeks after a mistrial in the case without stating any reason for doing so. [Violation of Canons 2B and 3B(5) of the Texas Code of Judicial Conduct.] *Private Reprimand of a County Criminal Court at Law Judge* (02/12/04)

CANON 3D(2): A judge who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action.

- The judge failed to report lawyers who he knew were engaged in unethical, and in some cases, illegal activities, and participated himself in some of these same unethical and illegal activities while serving as a member of the judiciary. [Violation of Article V, Section 1-a(6)A of the Texas Constitution and Canons 2A and 3D(2) of the Texas Code of Judicial Conduct]. *Public Reprimand of Roy W. Richard, Jr., Municipal Court Judge* (01/28/04)

CANON 6C(2): A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider *ex parte* or other communications concerning the merits of a pending judicial proceeding. . . .

- The judge engaged in an improper *ex parte* communication when he placed phone calls and considered testimony from witnesses who were not before the court. [Violation of Canon 6C(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Justice of the Peace.* (01/15/04)

Texas Constitution, Article V, Section 1-a(6)A. Any Justice or Judge of the courts established by this Constitution or created by the Legislature as provided in Section 1, Article V, of this Constitution, may, subject to the other provisions hereof, be removed from office for willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice. Any person holding such office may be disciplined or censured, in lieu of removal from office, as provided by this section.

- The judge was arrested on three different occasions for driving while intoxicated, which compromised the public's confidence in the integrity and cast public discredit upon the judiciary. [Violation of Article V, Section 1-a(6) of the Texas Constitution]. *Public Reprimand of Salvador Zarate, Justice of the Peace, Pct 3* (09/09/03).

- The judge acted as an intermediary in an effort to secure votes to benefit a candidate for a Robertson County Commissioner. He approached the candidate and offered to help him secure 100 election votes for and in consideration of $500.00. The judge stated that absentee voters trusted him, and that the people "who did the absentees" waited until he came by and asked him how to vote. [Violation of Article V, Section 1-a(6)A of the Texas Constitution.] *Public Warning of Fredrick B. Webber, Municipal Court Judge* (06/11/04).

- The judge's actions and suggestions regarding the administration of corporal punishment by parents to their children constituted willful or persistent conduct that cast public discredit upon the judiciary or administration of justice. [Violation of Article V. Section 1-a(6)A of the Texas Constitution.] *Private Warning and Order of Additional Education of a Justice of the Peace* (08/31/04).

- The judge's arrest for suspicion of driving while intoxicated became publicly known in his community. Although no criminal charges were ever filed against him in connection with this incident, the judge admitted that he was in possession

of an open container of beer at the time of his arrest. [Violation of Article V, Section 1-a(6)A of the Texas Constitution.] *Private Admonition of a Justice of the Peace* (01/02/

VOLUNTARY AGREEMENTS TO RESIGN IN LIEU OF DISCIPLINARY ACTION

The Commission opened a complaint based on media reports concerning the judge's alleged use of profanities and a racial epithet while magistrating prisoners in jail. Two other complaints were filed, alleging that in the course of performing his judicial duties the judge exhibited impatience, a lack of dignity and courtesy and used profanity. After the judge appeared informally before the Commission and discussed the allegations, the Commission voted to institute formal proceedings against him, and recommended to the Texas Supreme Court that the judge be suspended from office, without pay, pending the outcome of the formal proceedings. The Texas Supreme Court issued an Order of Suspension against the judge, suspending him from office, without pay, pending the outcome of the formal proceedings. A public fact-finding trial was conducted before a district judge, duly appointed as special master by the Texas Supreme Court. The special master filed his Findings of Fact with the Commission, and the Commission heard objections to said Findings. The Commission entered its rulings on said objections and issued its Findings, Conclusions and Recommendations, requesting that the Texas Supreme Court appoint a Review Tribunal, that the judge be removed from office, and that he be prohibited from holding judicial office in the future. Although the judge denied the allegations of misconduct, he opted to resign from office rather than spending time and money on further disciplinary proceedings. No Findings of Fact or Conclusions of Law were made in connection with the complaints, but the parties agreed that the allegations of judicial misconduct, if found to be true, could result in further disciplinary action. The parties agreed that the judge's resignation was not an admission of guilt, fault or liability. The Commission agreed that it would not pursue further disciplinary proceedings against the judge in connection with said complaints, and the judge agreed to be disqualified from future judicial service; sitting or serving as a judge in the State of Texas in the future; standing for election or appointment to judicial office in the State of Texas; or performing or exercising any judicial duties or functions of a judicial officer in the state, including the performance of wedding ceremonies. *Voluntary Agreement of Matt H. Zepeda, Justice of the Peace, to Resign from Judicial Office in Lieu of Disciplinary Action* (02/20/04).

The Commission received a complaint against the judge alleging that he engaged in sexually inappropriate conduct towards several women with whom he dealt in his official capacity. After the judge appeared informally before the Commission and discussed the allegations, the Commission voted to institute formal proceedings against him, and recommended to the

Texas Supreme Court that the judge be suspended from office, without pay, pending the outcome of the formal proceedings. The Texas Supreme Court issued an Order of Suspension against the judge, suspending him from office, without pay, pending the outcome of the formal proceedings. Although the judge denied the allegations of misconduct, he opted to resign from office rather than spending time and money on further disciplinary proceedings. No Findings of Fact or Conclusions of Law were made in connection with the complaints, but the parties agreed that the allegations of judicial misconduct, if found to be true, could result in further disciplinary action. The parties agreed that the judge's resignation was not an admission of guilt, fault or liability. The Commission agreed that it would not pursue further disciplinary proceedings against the judge in connection with said complaints, and the judge agreed to be disqualified from future judicial service; sitting or serving as a judge in the State of Texas in the future; standing for election or appointment to judicial office in the State of Texas; or performing or exercising any judicial duties or functions of a judicial officer in the state, including the performance of wedding ceremonies. *Voluntary Agreement of Lloyd Locke, Justice of the Peace, to Resign from Judicial Office in Lieu of Disciplinary Action* (06/10/04).

The Commission received several complaints alleging that the judge had shown a lack of patience, dignity and courtesy towards litigants and attorneys in the course of performing her judicial duties. Although the judge denied the allegations of misconduct, she opted to resign from office rather than spending time and money on further disciplinary proceedings. No Findings of Fact or Conclusions of Law were made in connection with the complaints, but the parties agreed that the allegations of judicial misconduct, if found to be true, could result in further disciplinary action. The parties further agreed that the judge's resignation was not an admission of guilt, fault or liability. The Commission agreed that it would not pursue further disciplinary proceedings against the judge in connection with said complaints, and the judge agreed to be disqualified from future judicial service; sitting or serving as a judge in the State of Texas in the future; standing for election or appointment to judicial office in the State of Texas; or performing or exercising any judicial duties or functions of a judicial officer, including the performance of wedding ceremonies. *Voluntary Agreement of Carolyn Day Hobson, Former Judge, to Resign from Judicial Office in Lieu of Disciplinary Action* (10/10/03).

The Commission and a private citizen initiated complaints against the judge, based on several newspaper articles and television news reports containing various allegations, including that the judge exhibited a poor judicial demeanor and failed to follow the law in proceedings in his court. Although the judge denied the allegations of misconduct, he opted to resign from office rather than spending time and money on further disciplinary proceedings. No Findings of Fact or Conclusions of Law were made in connection with the complaints, but the parties agreed that the allegations of judicial misconduct, if found to be true, could result in further disciplinary action. The parties agreed that the judge's resignation was not an admission of guilt, fault or liability. The Commission agreed that it would not pursue further disciplinary proceedings against the judge in connection with said complaints, and the judge agreed to be disqualified from future judicial service; sitting or serving as a judge in the State of Texas in the future; standing for election or

appointment to judicial office in the State of Texas; or performing or exercising any judicial duties or functions of a judicial officer in the state. *Voluntary Agreement of Jack Byno, Former Municipal Judge, to Resign from Judicial Office in Lieu of Disciplinary Action* (12/5/03).

The Commission received a complaint alleging that the judge committed judicial misconduct in her sentencing practices and procedures for handling certain Class C misdemeanor cases filed in her court. Although the judge denied the allegations of misconduct, she opted to resign from office rather than spending time and money on further disciplinary proceedings. No Findings of Fact or Conclusions of Law were made in connection with the complaints, but the parties agreed that the allegations of judicial misconduct, if found to be true, could result in further disciplinary action. The parties further agreed that the judge's resignation was not an admission of guilt, fault or liability. The Commission agreed that it would not pursue further disciplinary proceedings against the judge in connection with said complaints, and the judge agreed to be disqualified from future judicial service; sitting or serving as a judge in the State of Texas in the future; standing for election or appointment to judicial office in the State of Texas; or performing or exercising any judicial duties or functions of a judicial officer. *Voluntary Agreement of Virginia Beason, Former Municipal Judge, to Resign from Judicial Office in Lieu of Disciplinary Action* (06/10/04).

The Commission initiated a complaint against the judge based on several newspaper articles containing allegations that the judge had committed theft and assault. Although the judge denied the allegations of misconduct, she opted to resign from office rather than incurring the expense and expending time on further disciplinary proceedings. No Findings of Fact or Conclusions of Law were made in connection with the complaint, but it was agreed that the allegations of misconduct, if found to be true, could result in judicial disciplinary action. The Commission agreed that the judge's resignation was not an admission of guilt, fault or liability. The Commission agreed that it would not pursue further disciplinary proceedings against the judge in connection with said complaint, and the judge agreed to be disqualified from future judicial service; sitting or serving as a judge in the State of Texas in the future; standing for election or appointment to judicial office in the State of Texas; or performing or exercising any judicial duties or functions of a judicial officer in the state. *Voluntary Agreement of Roxane E. Martinez, Former Municipal Court Judge, to Resign from Judicial Office in Lieu of Disciplinary Action* (06/10 /04).

A complaint was filed alleging judicial misconduct for the judge's failure to comply with mandatory judicial educational requirements, and a supporting affidavit was later submitted confirming the allegations. The judge resigned rather than spending time and money on further disciplinary action. *Voluntary Agreement of Krista K. McAnally, Municipal Court Judge, to Resign from Judicial Office in Lieu of Disciplinary Action* (05/14/04).

A complaint was filed alleging judicial misconduct for the judge's failure to comply with mandatory judicial educational requirements, and a supporting affidavit was later submitted confirming the allegations. The judge resigned rather than spending time and money on further disciplinary action. *Voluntary Agreement of Eddie Vuittonet, Justice of the Peace, to Resign from Judicial Office in Lieu of Disciplinary Action* (05/14/04).

One of the best-known Coryell County courthouse events occurred in 1909. A woman alleged that an affluent man in Gatesville injected drugs into her box of chocolates and took advantage of her. She became pregnant, and, after she gave birth in a Fort Worth home for unwed mothers, she returned to Gatesville, where the man was being tried for the crime of seduction, a felony. She stood in the hallway inside the courthouse and looked through the window into the courtroom. Fearing that the man's wealth would persuade the jury to acquit him, she shot and killed him and two others in the courtroom, and injured two observers as well. Her brother grabbed the gun from her but it went off several more times. According to courthouse lore, when the shooting started, a man fell out of a courtroom window and ran away. Cowboys "spittin' and whittlin'" around the courthouse square thought he was the shooter, so they chased him down on their horses, roped him and brought him back. The woman was indicted for murder, and she was tried in the same courtroom a year later. She was acquitted by a jury, because of her mental state.

In one of the first recorded cases at the courthouse, a Coryell County jury found three brothers guilty of "Illegal Marking of Hogs;" they were fined $8, and jailed for eight hours. Several citizens were found guilty of crimes such as "Cutting Timber Not His Property" and "Unlawful Using of 2 Horses Not Their Property." If an uncooperative witness was found guilty of "Failure To Appear" at trial, the usual punishment for this contempt of court was a fine of $25.

Ethics Test

Directions: Place a check in the appropriate column to indicate whether the conduct is proper or improper for a municipal court judge.

	Proper	Improper
1. You have accepted an invitation to speak before students in a driver's education class at your daughter's school.		
2. Now that you are a judge and no longer the mayor you stop meeting local police officers every morning for coffee at a popular cafe.		
3. Your spouse is interested in your work and asks you each evening who has been in court and for what.		
4. A citizen wants to take you to lunch as a thank you for sending his barking dog case to mediation for settlement.		
5. You accept season football tickets from a local attorney who often appears in municipal court defending persons who received traffic tickets.		
6. Before you were appointed a judge, you enjoyed riding with the police in squad cars in the evening. You decide to discontinue this practice because of your new position as judge.		
7. Your warrant officer picks your son up from school each day and drives him home.		
8. A judge signs warrants in his or her office while drinking a beer.		
9. A judge tells a racial or sexual joke in the presence of attorneys who are waiting for trial to begin.		
10. A judge calls another municipal court judge in another city and asks him to dismiss his grandchild's ticket.		
11. A judge refuses to call a case to trial because he or she is mad at the defendants.		
12. A judge's clerk adopts a rude attitude and refuses to provide an angry defendant with a response to his questions.		
13. A judge used court letterhead to write a letter of recommendation for his court clerk, who was seeking another job.		
14. A judge voluntarily testified in a case in another court as to the character of a witness.		
15. A judge, who was driving erratically, was pulled over by a police officer. The judge immediately informed the officer of his judicial position.		

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TEXAS COURT OF CRIMINAL APPEALS

TEXAS MUNICIPAL COURTS EDUCATION CENTER

1609 SHOAL CREEK BOULEVARD, SUITE 302 AUSTIN, TEXAS 78701
TELEPHONE (512) 320-8274
1-800-252-3718
FAX (512) 435-6118

AN INTRODUCTION TO ORDINANCES

Presented by

Bonnie Goldstein
Municipal Judge
Cockrell Hill & Dallas

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

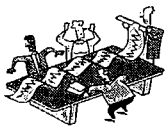
1. Determine the authority of cities to enact ordinances.
2. Determine if a particular ordinance is valid under state or federal law.
3. Dispose of juvenile curfew ordinance cases.
4. Issue warrants and summons in proper circumstances.
5. Conduct a trial of an alleged city ordinance violation.
6. Apply proper sentences to city ordinance violations.

ORDINANCES

LOCAL GOVERNANCE AT ITS FINEST

Prepared and Presented by

Bonnie L. Goldstein

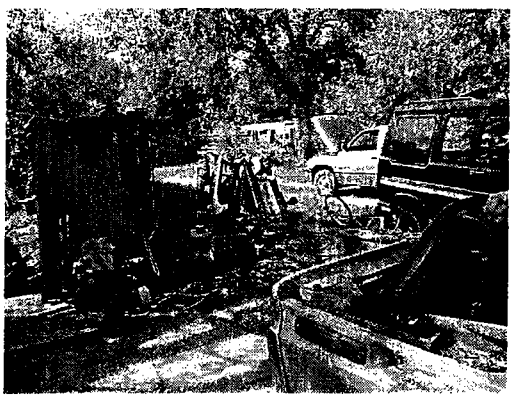


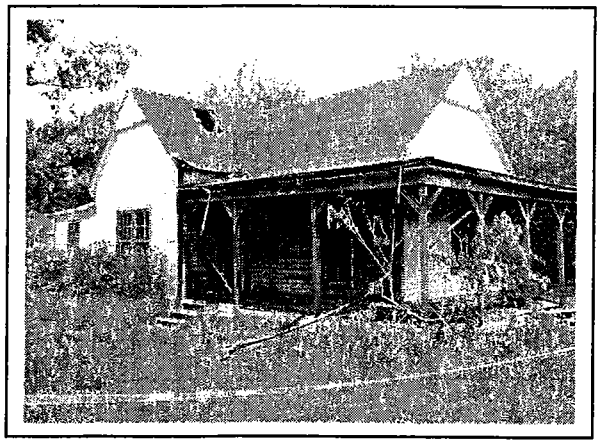
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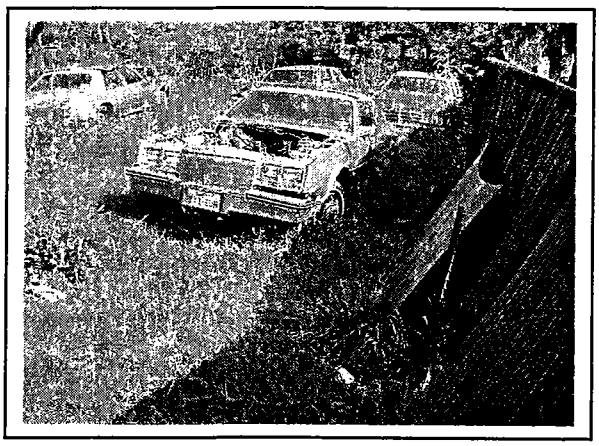
To the Texas Municipal Courts Education Center

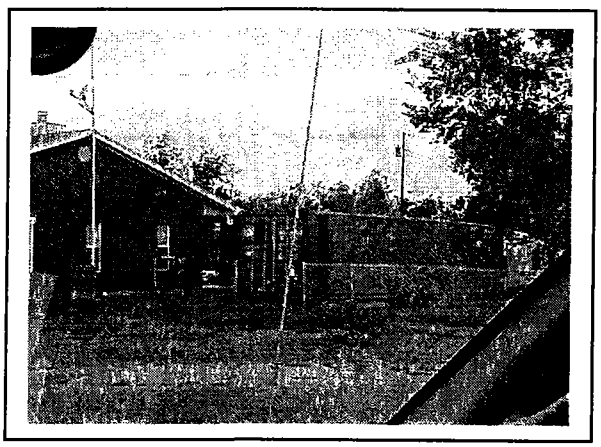
2005-2006











Legislative Authority or Police Power to enact ordinances

GENERAL MUNICIPAL COURT JURISDICTION

CRIMINAL JURISDICTION

- exclusive original jurisdiction
- all criminal cases under City ordinances
- punis hable by fine only
  - $2,000.00 fire safety, zoning and public health and sanitation; or
  - $500.00 in all other cases.

ORDINANCES

***

AUTHORITY TO CREATE

Home Rule Municipalities

May exercise of police power to the extent not prohibited by the United States or Texas Constitutions or federal or state law.

General-Law Municipalities

May exercise police power only as specifically authorized by the general laws of the United States or Texas Constitution or federal or state law.

The governing body of a municipality may adopt, publish, amend or repeal an ordinance, that:

(1) is for the good government, peace or order of the municipality or for the trade and commerce of the municipality; and

(2) is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality.

FORMAT OF ORDINANCES

Whereas Provisions

- **statutory basis**
- **authority**
- **legislative findings**

Penalties/Remedies

- criminal, civil or injunctive
- compliance
- culpable mental state

VALIDITY OF ORDINANCES

Municipal Acts Presumed Valid if:

- no law suit filed
- not void at time of enactment
- not preempted

Challenges:

"extraordinary burden" to demonstrate reasonable minds could not differ

DOCTRINE OF PREEMPTION

Ordinance must be consistent, and not conflict with federal and state law.

CHALLENGES TO ORDINANCES

Constitutional Challenges

- facial invalidity
- substantive due process
- procedural due process
- equal protection
- taking of property

POST CONVICTION OPTIONS

- DEFERRED DISPOSITION
- REQUIRED COURT APPEARANCE FOR HABITUAL VIOLATORS
- ENHANCED PENALTIES
- DAILY CITATIONS
- MANDATORY PRETRIALS WITH PROSECUTOR
- PLEAS AND PAYMENT WITHOUT COMPLIANCE

INVESTIGATIVE OPTIONS



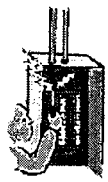
Administrative Search Warrants

Warrants for Fire, Health and Code Inspections

- may be issued to the fire marshal, health officer or code enforcement officer;
  - **for the purpose of allowing the inspection of any specified premises;**
  - **to determine the presence of a fire or health hazard or unsafe building condition or a violation of any fire, health or building regulation, statute, or ordinance.**

Administrative Search Warrants

- may only be issued upon the presentation of evidence of probable cause to believe that such a condition is present on the premises sought to be inspected.



Warrants for Fire, Health and Code Inspections

- Probable cause
  - age and general condition of the premises;
  - previous violations or hazards at same location;
  - type of premises;
  - purposes for which premises are used; and
  - hazards, violations and general condition of premises near location.



SPECIFIC TYPES OF ORDINANCES

NUISANCES

ORDINANCES
WITH
CRIMINAL PENALTIES
AND
CIVIL ABATEMENT



Junked Vehicles

Junked Vehicle is defined as a vehicle that is self propelled and does not have lawfully attached to it:

an unexpired license plate; or

a valid motor vehicle inspection certificate; and is

wrecked, dismantled or partially dismantled or discarded; or

inoperable and has remained inoperable for more than:

72 consecutive hours, if the vehicle is on public property; or

30 consecutive days if the vehicle is on private property.

Offense

An offense occurs if the junked vehicle constitutes a public nuisance. A junked vehicle is declared to be a public nuisance if:

- the junked vehicle, including a part of the junked vehicle is visible at any time of the year from a public place or public right-of-way:
- is detrimental to the safety and welfare of the public;
- tends to reduce the value of private property;
- invites vandalism;
- creates a fire hazard;
- is an attractive nuisance creating a hazard to the health and safety of minors;
- produces urban blight adverse to the maintenance and continuing development of municipalities; and
- is a public nuisance.

Proceedings

Criminal Proceedings

- Fines – not to exceed $200.00
- Court shall order abatement and removal of the nuisance upon conviction.

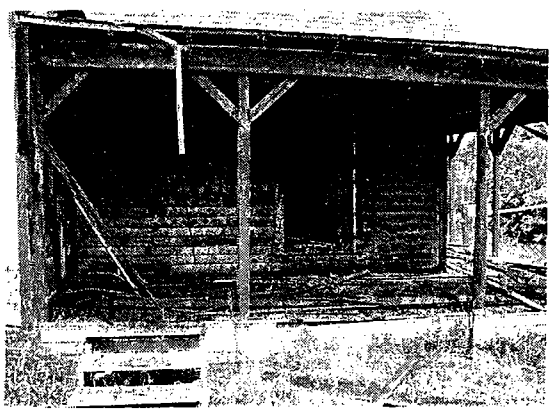




High Weeds and Grass and Unsightly/Unsanitary Matter

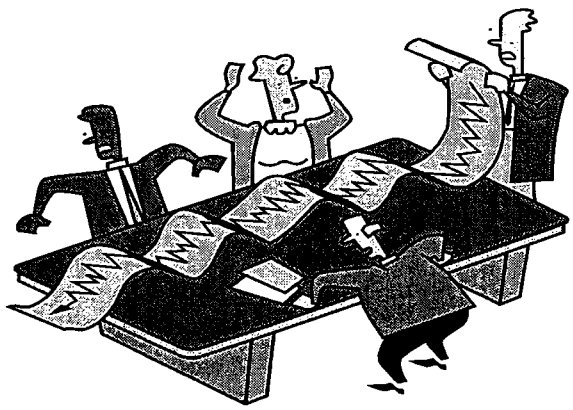
The City Council may:

- require the filling, draining, and regulating of any place in the municipality that is unwholesome, contains stagnant water, or is in any other condition that may produce disease;
- require the owner of a lot in the municipality to keep the lot free from weeds, rubbish, brush, and other objectionable, unsightly, or unsanitary matter;
- regulate the cleaning of a building, establishment, or ground from filth, carrion, or other impure or unwholesome matter.



ORDINANCES

LOCAL GOVERNANCE AT ITS FINEST



Prepared and Presented by
Bonnie Lee Goldstein

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To the Texas Municipal Courts Education Center
2005-2006

[This paper uses with permission concepts and cases from Dottie Palumbo's 1999 paper "Ordinances" presented at the Municipal Prosecutor School.]

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In 1990, Bonnie began her legal career and over the years has practiced in numerous areas such as in education law, state and local government, government contracts and construction litigation. Bonnie recently opened her law office practicing in the areas of state and local government law and immigration. Since 1994, Bonnie has served as the Assistant City Attorney for the Town of Flower Mound, City of McKinney, Texas, among others. She is currently the City Attorney for the City of Princeton and the City of Italy, the prosecutor for the City of Balch Springs and assists the City of Jacksboro with special development, code enforcement and land use issues. She routinely represents and advises local governments on a variety of issues, including contracts, procurement, construction, employment, code enforcement, land use, planning and zoning issues, variances, and municipal court.

Bonnie received her Bachelor of Arts degree at Hood College, Frederick Maryland in 1984, and her law degree in 1990 from George Washington University, the National Law Center, in Washington, D.C. Bonnie has authored and presented papers to various groups, including the GCAT, Texas Municipal League, the North Central Texas Council of Governments and Police Training Academy and the Texas Municipal Courts Education Center. Bonnie is fluent in Spanish and was named Legal Counselor to the Mexican Consulate in Houston on March 20, 1998. In February of 2003 she was appointed the Presiding Judge for the City of Cockrell Hill and in August of 2004 she became an Associate Judge for the City of Dallas.

INTRODUCTION

Municipalities have legislative authority, or police power, to enact ordinances with the full force and effect of law. A municipality's authority under it's police power is broad with the ultimate purpose of safeguarding the health and general welfare of its citizenry. It is not, however, without limits – regulations must have a rationale basis and reasonably promote the intended purpose.

There are essentially four types of municipalities: Home Rule Municipalities and General Law Cities, Type A, Type B, or Type C. Ordinances are the product of the legislative functions of a City Council generally authorized under state statute or city charter. Municipal courts have exclusive original jurisdiction in all cases that arise under a City's ordinances, as well as have civil abatement authority in some instances. This paper is to familiarize you with the authority underlying ordinances, the basic structure of ordinances and the options available to the courts for attaining compliance.

II. GENERAL MUNICIPAL COURT JURISDICTION

A. CRIMINAL JURISDICTION

Municipal courts have exclusive original jurisdiction within the City's territorial limits in all criminal cases that arise under the City's ordinances and are punishable by fine only not to exceed

1. $2,000.00 in all cases arising under municipal ordinances governing fire safety, zoning and public health and sanitation (including dumping of refuse)[1]; or

2. $500.00 in all other cases[2]

Although the Justice Courts have concurrent jurisdiction in some instances, JP's have no authority relative to municipal ordinances.

B. CIVIL JURISDICTION

Municipal courts may be granted limited civil abatement or administrative authority by a City Council under authority of state law; for example, the authority to abate junked vehicles has often been given to municipal courts. Other, relatively recent, statutory provisions have the potential effect of expanding a municipal court's civil jurisdiction.

1. TEX. GOV'T CODE, §30.00005.

Section 30.00005 of the Government Code grants additional authority to municipal courts of record relative to health and safety and nuisance abatement ordinances. Specifically, a municipality may, **by ordinance,** provide that its municipal court of record has civil jurisdiction[3] for purposes of enforcing municipal ordinances enacted under Chapter 214 of the Texas Local Government Code (substandard structures) and Chapter 683 of the Texas Transportation Code

(junked vehicles). Further, the statute now provides that a municipal court of record has concurrent jurisdiction with a district court or county court at law under Subchapter B, Chapter 54 of the Texas Local Government Code within the corporate city limits and the ETJ for purposes of enforcing health and safety and nuisance abatement ordinances. Finally, municipal courts of record were granted authority to issue search warrants for the purpose of investigating a health and safety or nuisance abatement ordinance violations and seizure warrants for the purpose of securing, removing or demolishing property and removing the debris.

As is evident, these provisions only apply to municipal courts of record, as opposed to courts of no record where the appeal is *de novo* to a county court. A City must designate the municipal court of record as the proper body to hear an appeal under Chapter 214 as opposed to the City Council or Building & Standards Commission as noted above. This grant of jurisdiction may greatly enhance and expedite the proceedings to abate nuisances but it presents unique problems to the municipal court who is unaccustomed to the civil procedures which must be followed to ensure no unconstitutional taking of property occurs.

2. TEX. LOCAL GOV'T CODE, § 54.044.

An alternative procedure has been created to provide for an administrative hearing under Section 54.044 of the Texas Local Government Code.[4] Under this provision, a city may adopt a procedure for an administrative adjudication hearing under which an administrative penalty could be imposed for enforcement of an ordinance under Section 54.032 or adopted under Section 214.001 of the Local Government Code. The procedure must provide for due process, *i.e.*, a hearing and an opportunity to be heard. Further, the procedure must provide for a time frame within which a hearing is to be held, the appointment of a hearing officer with authority to administer oaths and issue orders compelling the attendance of witnesses and production of documents and the amount and disposition of administrative penalties, costs and fees. A municipal court[5] may enforce the administrative hearing officer's orders for witnesses and documents. The summons or citation[6] must advise the person violating the ordinance of the right to a hearing, the date and time of the hearing. The summons or citation is kept as a City record and is a rebuttable proof of the facts stated therein. The statute further provides that a person charged with violating the ordinance who fails to appear at the hearing is considered to have admitted liability for the violation charged.[7] At the hearing, the administrative hearing officer is to determine and issue an order stating whether the person violated the ordinance and the amount of the penalty, costs and fees to be assessed. The order is to be filed with the City Secretary and may be enforced in a civil collection suit or by obtaining an injunction prohibiting or requiring specific conduct. The decision of the administrative hearing officer is appealable to the municipal court within 31 days of the date the order is filed. The appeal does not stay enforcement and collection, unless a bond is posted with an agency designated for that purpose.[8]

III. ORDINANCES IN GENERAL

A. AUTHORITY TO CREATE

1. Home Rule Municipalities

A home rule city, derives it's power from the Texas Constitution, and may adopt an ordinance or charter provision, subject only to limitations imposed by the Legislature. In other words, a home rule city may adopt an ordinance and exercise it's general police power to the extent not prohibited by the United States or Texas Constitutions or federal or state law.[9] The state legislature, however, can limit or augment, a home-rule municipality's self governance.[10]

2. General-Law Municipalities

General-law municipalities, on the other hand, can exercise police power only as specifically authorized by the general laws of the United States or Texas Constitution or federal or state law.[11] The Legislature has created the distinct forms of governments for each general law city. *See generally* Tex. Local Gov't Code, Chapter 5, Organization of Municipal Government and Chapters 6 and 22 (Type A), Chapters 7 and 23 (Type B) and Chapters 8 and 24 (Type C). Inasmuch as a general law municipality can only exercise that power specifically authorized by statute, each such municipality must look to the specific statutory authority relative to its form of government for the nature and extent of it's applicable authority.[12]

It is impossible to generalize the authority of each type of municipality; however, Chapter 51 of the Texas Local Government Code provides:

> The governing body of a municipality may adopt, publish, amend or repeal an ordinance, rule, or police regulation that:
>
> (1) is for the good government, peace or order of the municipality or for the trade and commerce of the municipality; and
>
> (2) is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality.[13]

The provisions for the enforcement of municipal ordinances and the range of penalties is found in Chapter 54 of the Local Government Code, specifically:

> (a) The governing body of a municipality may enforce each rule, ordinance, or police regulation of the municipality and may punish a violation of a rule, ordinance, or police regulation.

(b) A fine or penalty for the violation of a rule, ordinance, or police regulation may not exceed $500. However, a fine or penalty for the violation of a rule, ordinance, or police regulation that governs fire safety, zoning, or public health and sanitation, including dumping of refuse, may not exceed $2,000.

(c) This section applies to a municipality regardless of any contrary provision in a municipal charter.[14]

As a practical matter, the ordinance will stipulate whether a violation of the particular ordinance imposes a maximum fine of $500.00 or $2000.00 and the City Council generally allows the judge to impose a standard window fine or a fine within that range at time of trial by the judge or jury.

Notwithstanding the foregoing, a Type B General Law Municipality may prescribe the fine for the violation and if it is a jury trial, the fine may only be imposed upon the jury's verdict.[15] A seemingly forgotten provision from a previous century (1875) provides:

> On a two-thirds vote of the members present, the governing body of a Type A general-law municipality may remit a fine or a penalty, or a part of a fine or penalty imposed or incurred under law or under an ordinance or resolution adopted in accordance with law.[16]

B. FORMAT OF ORDINANCES

1. Whereas Provisions

The Whereas provisions of an ordinance generally set forth the statutory basis or authority for the ordinance and the legislative findings of Council relative to the need for the ordinance. These provisions generally address the health, safety and welfare concerns sought to be addressed by the ordinance.

2. Adoption of Legislative Findings of Council

The premises for the adoption of the ordinance are generally adopted in the first section of the ordinance to support its enforceability.

3. Text of Ordinance

An ordinance may contain many subparts depending upon the nature and intent of the local legislation. Typical provisions include:

i. the general definitions;

ii. description of the offense;
iii. assigning responsibility for violations or adherence to a particular standard;
iv. outlining procedures for enforcement;
v. assigning an enforcement authority;
vi. providing for an appeal; and
vii. providing for a penalty.

4. General Penalty Provisions

a. Types of Remedies

Ordinances are generally enforced by means of a criminal penalty, civil penalties or injunctive relief. Municipal courts are generally concerned with the criminal penalties; however, state statutes have afforded municipal courts administrative authority and most recently, municipal courts of record may be authorized, if so granted by ordinance, to have concurrent jurisdiction with district courts relative to Chapter 54 injunctive proceedings.[17]

As stated above, the fine that may be assigned for particular ordinances may be a maximum of $500.00 or $2000.00. However, if a state statute imposes a fine for conduct the City has also proscribed, the fine imposed by the City cannot exceed the state penalty.[18]

Whether staff seeks criminal penalties or civil abatement or both, is a matter of discretion. The focus of code enforcement and the City's enforcement of ordinances is ultimate compliance. Criminal penalties do not always achieve the desired results; therefore, civil abatement provides an additional hammer to gain compliance. Civil abatement generally requires specific notice, set hearings prior to the abatement whereas criminal procedures do not require notice prior to the issuance of citations. The two can work in tandem to achieve compliance.

b. Culpable Mental State May Not Be Required for Proof of an Offense.

Culpable mental states are generally required for all criminal offenses and if one is not specifically stated or assigned, courts have referred to the general mental state provisions of the Texas Penal Code, Specifically, "[i]f the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required ***unless the definition plainly dispenses with any mental element.***"[19] Therefore, many cities attempt to dispense with the culpable mental state requirement by including the following or similar language explicitly in the ordinance:

> Unless otherwise specifically set forth herein, or in state law as adopted, allegation and evidence of culpable mental state are not required for the proof of an offense defined by this Ordinance.

If this language is included in an ordinance, any complaint setting forth the elements of the offense would not require the culpable mental state of 'knowingly,' 'intentionally,' 'recklessly,' or 'criminal negligence.'

Notwithstanding the foregoing, the 79th Texas Legislature enacted HB 970 which prevents a city ordinance that imposes a fine in excess of $500 from dispensing with the requirement of a culpable mental state in the definition of the offense.

5. Repeal of Conflicting Ordinances

Most ordinances contain a provision that allows for the repeal of conflicting ordinances. This tracks with general statutory construction that later statutes, to the extent they conflict, are repealed to the extent of that conflict.

6. Severability Clause

Many ordinances contain a severablility clause. This clause is intended to allow an ordinance to remain intact and in full force and effect, if one or more sentences, clauses or provisions is found to be unconstitutional.

7. Publication and Effective Date

Many ordinances are required to be published in the City's official newspaper prior to taking effect.[20] Some municipal charters require two readings before an ordinance will have the full force and effect of law. The ordinance will also stipulate when the law will be in effect.

C. VALIDITY OF ORDINANCES

Chapter 52 of the Texas Local Government Code provides for the general procedures for the adoption of municipal ordinances. Municipal acts are presumed to be valid if no lawsuit to annul or invalidate the act has been filed on or before the third anniversary of the effective date, unless it was void at the time it was enacted or it was pre-empted.[21] It is no easy task to overturn an ordinance for a court may not substitute its judgment for that of the legislative body -- the City Council. In fact, the Court is required to recognize the presumption of validity accorded such a legislative act. [22]

> [O]rdinances are presumed valid. [Citations omitted.] The courts may interfere only if an ordinance is unreasonable and arbitrary. Hence, parties challenging an ordinance bear the "extraordinary burden" of demonstrating that reasonable minds could not differ as to whether the

> ordinance has a "substantial relationship to the protection of the general health, safety or welfare of the public." Otherwise, the ordinance will stand. [Citations omitted.] Thus, the Ordinance need only have a possible rational basis; the court will not inquire into its actual purposes. In other words, the court's review is deferential to the City.[23]

Inasmuch as there is a strong presumption of validity of municipal legislation, the burden of proof is on the party seeking invalidation,[24] and the burden is a heavy one.[25]

D. DOCTRINE OF PREEMPTION

A municipality may only enact an ordinance that is consistent, and does not conflict, with federal and state law. The Texas Penal Code expressly preempts ordinances relative to criminal offenses, specifically:

> No governmental subdivision or agency may enact or enforce a law that makes any conduct covered by this code an offense subject to a criminal penalty.

Tex. Penal Code, § 1.08 (West 1994).

Essentially, municipalities are prohibited from adopting ordinances that are covered by a federal or state statute, or where the legislature intended state law to exclusively occupy the field. However, the mere fact that the legislature has passed a law on a particular subject matter does not mean the subject matter is completely preempted. If any reasonable construction can leave intact both a state statute and local ordinance, pre-emption does not occur.[26]

However, what constitutes an absolute preemption versus a case of conflict without preemption is generally left to the courts. For example, a comprehensive animal control ordinance, due to its broad application, was not preempted by the state's "first bite" law.[27] This is likely to still be the case; however, dangerous dog procedures under the Texas Health & Safety Code, §522.001 *et seq.* will likely preempt any procedures related specifically to the classification, determination and disposition of dangerous dogs, as therein defined.

As a general rule of thumb, if a state statute or federal regulation sets forth specific rules, procedures or penalties, the municipality, if it adopts an ordinance, should mirror that rule or procedure or penalty. If the statute does not completely address all issues, the doctrine of preemption will likely allow non-conflicting provisions that may have some overlap.

Examples

- City cannot pass an ordinance forbidding the killing of all feral pigeons since it is expressly authorized by Parks & Wildlife Code, § 64.002(b).[28]

- Chapter 366 of the Health and Safety Code provides minimum state standards for regulation of on-site sewage facilities. Chapter 366 implicitly repeals Section 342.002 of the Health and Safety Code and Texas Local Gov't, §§ 51.012, 214.012(2), 214.014 and 217.002 to the extent they might regulate such facilities. A municipality may regulate such facilities more stringently, but from experience, it is with permission of the TNRCC.[29] Local standards must not directly conflict with Chapter 366.[30]

- Texas Alcoholic Beverage Code, § 109.57(b) governs the regulation of alcoholic beverages unless otherwise provided.[31]

- Regulation of HUD-Code Manufactured Housing is governed by Tex. Rev. Civ. Stat. Ann., art. 5221f. However, a home rule city is not precluded from regulating unoccupied or unsafe manufactured homes that pose a risk to the public health and welfare. LO-09-093. Zoning ordinance that referred only to "mobile homes" without addressing distinction between "HUD-Code Manufactured homes" and "mobile homes" failed to comply with the Act requirement that HUD-Code Manufactured housing be allowed and be distinct from mobile homes and therefore could not be enforced against homeowner to move her HUD-Code Manufactured home.[32]

- A home rule city is authorized to adopt an ordinance restricting the location of tobacco product vending machines, or ban them entirely, and by doing so does not run afoul of Chapters 154 and 155 of the Tax Code relative to permits for engaging in business.[33]

E. WHO CAN ENFORCE MUNICIPAL ORDINANCES

Generally, a person cannot claim to be a code enforcement officer or use the title "code enforcement officer" without first holding a certificate of registration or code enforcement officer in training certificate issued by the Texas Department of Health.[34] However, an exemption exists if the person is required to be licensed or registered under another Texas law and engages in code enforcement under that title or registration.[35] A code enforcement officer is defined as an agent of the State of Texas or a political subdivision thereof who engages in code enforcement.[36] In turn, "code enforcement" is defined as the inspection of public and private premises for the purpose of: identifying environmental hazards including fire or health hazards, nuisance violations, unsafe building conditions, and violations of any fire, health, or building regulation, statute, or ordinance and improving and rehabilitating those premises with regards to those hazards.[37]

In order to receive a certificate of registration, an applicant must: (1) have at least one year of full time experience in the field of code enforcement; (2) pass the examination conducted by the Texas Department of Health or the Department's designee; (3) pay the application, registration, and examination fees; and (4) meet all requirements prescribed by the Act and all Board Rules.[38] Once issued, a certificate of registration is valid for one year and may be renewed annually on payment of the required renewal fee and

completion of the annual continuing education requirements.[39] An applicant for a certificate of registration who has less than one year of full-time experience in the field of code enforcement may make an application for a certificate of registration and, on successful completion of the code enforcement examination conducted by the Department of Health and payment of the required fees, the individual is entitled to receive a code enforcement officer in training certificate which is valid for one year after the date of issuance.[40] An individual who possesses a code enforcement officer in training certificate may engage in code enforcement under the supervision of a registered code enforcement officer.[41]

Neither the State of Texas nor any political subdivision thereof, is required to employ a person registered as a code enforcement officer simply because it engages in code enforcement.[42] For example, there is nothing particular about the enforcement of a tree preservation ordinance or high weeds and grass that would require the person to be a certified code enforcement officer. Any city employee, such as a police officer enforcing the ordinance may issue notice of violations, as opposed to issuing code citations, that if ignored or not remedied, could be used as a basis to generate a complaint in municipal court. These notice of violations would be treated much the same as a citizen complaint versus a peace officer citation upon which a warrant could issue. To my knowledge, there is no requirement that citations - or notice of violations - be issued by a certified code enforcement officers.[43] However, a person commits a class C misdemeanor offense if he or she claims to be a code enforcement officer or uses a title that contains the words "code enforcement officer" without holding the required certification. [44]

F. SPECIFIC TYPES OF ORDINANCES

Municipalities are afforded broad discretion to enact ordinances designed to promote the public safety and welfare. City council do not have the authority to make an ad hoc determination that a particular activity is detrimental to the public good and assess an ad hoc punishment; rather, police power must be exercised through properly enacted ordinances. *Id.* The standard of review for a municipal ordinance is whether, as a substantive matter, reasonable minds could differ as to whether the ordinance has a substantial relationship to the protection of the general health, safety or welfare of the public; if the evidence reveals a fact issue the ordinance must be upheld.[45]

1. Nuisances

Municipalities have broad based authority to abate nuisances within their jurisdiction. Specifically:

> Type A: The City Council may abate and remove a nuisance and punish the person responsible for the nuisance; define and declare what constitutes a nuisance; and abate any nuisance the City Council believes may injure or affect the public health or comfort.[46]

Type B: The City Council may prevent, within the City limits, any nuisance and have the nuisance removed at the expense of the person responsible or the owner of the property where the nuisance exists.[47]

Home Rule: City Council can define and prohibit any nuisance within the City limits and within 5,000 feet outside the limits and may enforce all ordinances necessary to prevent, summarily abate and remove a nuisance.[48] The Attorney General has opined that where a municipality has adopted an ordinance defining and prohibiting a nuisance and grants enforcement authority within the corporate city limits and within 5,000 feet from the city limits, a municipal court has implied jurisdiction over cases arising from violations of the ordinance that occur outside city limits.[49]

The authority of Type C municipalities to broadly define and abate nuisances is not specifically granted; however, under the general provisions, Type C municipalities have the same authority as a Type A municipality unless a conflict exists.[50]

This authority, however, is not without limits. A City Council cannot, by declaration, identify a nuisance, that which is not in fact a nuisance.[51] Generally, acts which constitute nuisances were held to be nuisances at common law unless they constitute nuisances *per se, i.e.,* inherent by its very nature. The question as to whether a building or location constitutes a nuisance is a justiciable question for the court or jury.[52]

Examples of nuisance-based ordinances:

- noise ordinances;
- unsightly matters;
- high weeds and grass;
- animal control ordinances relative to the keeping of animals and livestock;
- Texas law characterizes fireworks as public nuisances and vests home-rule cities with the power to regulate public nuisances up to 5,000 feet from the city limits.[53]
- **Substandard Structures**

  In order to utilize this procedure, a municipality is required to adopt an ordinance requiring the vacation, securing and demolition of dilapidated structures.[54] The ordinance must establish minimum standards for the continued use and occupancy of buildings, provide for the giving of proper notice and provide for a public hearing.[55] Codes such as the Uniform

Code for the Abatement of Dangerous Buildings, the Uniform Housing Code or the International Building Code, provide useful definitions and are generally adopted in whole or in part to provide the requisite minimum standards.[56]

- **Business Regulations**

  There is no requirement at law, however, that a municipality find that a business or occupation constitutes a nuisance to be subject to a city's legitimate police power regulations. In fact, it is black letter law that "it is not necessary that a business constitute a nuisance to be subject to regulation under the police power." [57] An occupation that might become offensive due to the way it is conducted is "doubtless an appropriate subject for reasonable regulation," even when it is not a nuisance per se. [58]

2. Zoning[59]

The powers granted under the zoning authority are for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance.[60] In this regard, the municipality may regulate the height, number of stories and size of buildings, lot coverage, size of yards and open spaces, population density, the location and use of buildings.[61] A regulation is not effective until after a public hearing is held, providing parties in interest and citizens to have an opportunity to be heard. The regulations may only apply within the corporate city limits of a municipality.

The municipality may enact ordinances to enforce its zoning ordinances. The Texas Local Government Code makes it an offense for any person to violate a zoning ordinance adopted under this authority. An offense, as defined by the governing body, is a misdemeanor punishable by fine, imprisonment or both and may also provide for civil penalties.

3. Subdivisions and property development[62]

After a public hearing, a City Council may adopt rules governing plats and subdivisions of land to promote the health, safety, morals or general welfare and the safe, orderly and healthful development of the City.[63] The City Council can extend application of these ordinances to the extraterritorial jurisdiction; however, a fine or criminal penalty prescribed by ordinance does not apply to a violation in the ETJ.[64]

4. Miscellaneous Ordinances: Statutory Based

- **Sign Regulations**. Chapter 216, Texas Local Government Code, authorizes a municipality to require the relocation, reconstruction, or

removal of any sign within its corporate limits or it's extraterritorial jurisdiction.[65]

Many municipalities regulate the placement of signs to avoid urban blight and traffic hazards; for example, an ordinance may provide that signs are prohibited in the public right-of-way. Although traffic safety and aesthetics may be significant concerns, the ordinance must be narrowly tailored to achieve the public health and safety goal. Any proposed ordinance should be reviewed to ensure content-neutral regulation of signs for political or protected speech. Location can be regulated; not (political) content, except, to some degree, commercial speech. More specifically, cities may regulate the location, proximity, size, separation, setback and height provisions so long as the ordinance bears a reasonable relationship to the public health, safety or general welfare. [66] A municipality may enforce reasonable time, place and manner restrictions; however, such restrictions must be applied uniformly and in a non-discriminatory manner to all applicants.

The Supreme Court has held that a regulation is content based when the message conveyed determines whether the speech is subject to the restriction.[67] A successful sign ordinance does not seek to restrict the message or viewpoint being communicated; rather, it seeks to restrict the effect or medium of communication. If a government has adopted a regulation because of agreement or disagreement with the message being conveyed, the regulation will be subject to strict scrutiny and is unlikely to be upheld.[68] To be constitutionally palatable sign regulations should be content-neutral and applied evenhandedly to all signs and not reference particular ideas or views.

Recently, the Texas Legislature took a hard look at municipal regulation of political signs. Specifically, the legislature sought to limit municipal authority to prohibit, approve, limit or charge a special fee for removal of political signs on private real property.[69] To be protected, the sign must contain "primarily a political message" and not be temporary and generally available for rent or purchase to carry commercial advertising or other messages not primarily political in nature.[70] The Act does not limit a municipality's regulation of a sign that has an effective area greater than 36 feet, more than 8 feet high, illuminated or has moving elements or the ability to control the use of real property where it holds an easement or other encumbrance for a public purpose.[71]

Enforcement of a sign regulation that is not content-neutral may be successfully challenged in municipal court as applied to a particular defendant. Further, the enforcement of such regulations could subject the City ordinance to a constitutional challenge. Due to the very serious First Amendment implications involved in the regulation of sign ordinances, the City Attorney should be consulted before implementing these regulations.

- **Solicitation Ordinances**[72] Type A General Law Municipalities may license, tax, suppress, prevent or otherwise regulate hawkers, peddlers and pawnbrokers. Home Rule municipalities are not prohibited from enacting such legislation. As a threshold matter, peddling and soliciting goods from door-to-door may be subject to reasonable police regulation and licensing.[73] These regulations and licensing requirements must be narrowly drawn to serve a legitimate interest of the municipality.[74]

  One legitimate interest that may be articulated is public safety, provided the restrictions are reasonable and valid as to time, place and manner, For example, public safety concerns, such as prohibiting solicitation in roadways, from medians or within the public right-of-way, are still valid and permissible. Courts are split, however, as to whether prohibiting solicitation after a specific hour, such as 5:00 p.m, is a valid time, place and manner restriction.[75] A municipality must connect the restriction, such as no solicitation after sunset, to a legitimate governmental interest, such as crime prevention, to provide a more defensible ordinance.

  Caution must be exercised in enacting solicitation ordinances to avoid infringing upon First Amendment rights. For example, a permit requirement for the distribution of handbills or pamphlets by religious, political or non-profit organizations may now be considered unconstitutional due to a recent Supreme Court decision.[76] This prohibition would likely extend to any registration requirement, with or without fee, to a religious, political or non-profit organization. Again, this does not prohibit the regulation of general solicitation activities based upon a public safety rationale.

  To address the issue of firefighters "passing the boot," the 79th Texas Legislature enacted SB 245 which requires a city to permit a city employee to stand in a roadway to solicit charitable contributions if the employee submits to the city: (1) a written application and; (2) proof of liability insurance in an amount not less than $1,000,000. In addition, the city may require the employee to: (1) obtain a permit or (2) pay a reasonable fee before engaging in such activity.

- **Public Streets and Highways.** Article 311.001 of the Texas Transportation Code provides that a municipality has exclusive control and power over public streets, highways and alleys of City. This provides the base authority of many ordinances relative obstructions, solicitation and signage.

- **Firearms and Explosives.**[77] Municipalities may not adopt regulations relating to the transfer, private ownership, keeping, transportation, licensing or registration of firearms, ammunition or firearm supplies; however, a municipality still may regulate the discharge of firearms within

the corporate city limits or the carrying of a firearm by a person other than one licensed to carry a concealed handgun at a public park, public meeting, political rally, parade or official political meeting or nonfirearms-related school, college or professional athletic event.

- **Taxicab.**[78] In order to protect the public health, safety and welfare, a municipality, by ordinance, shall license, control and otherwise regulate private passenger vehicles that provide passenger taxicab transportation services for compensation, designed to carry no more than eight passengers and operated within the jurisdiction of the municipality or within property in which the municipality has an interest. The ordinance may include regulations for the entry into the business, including controls, limits or other restrictions on the total number of persons providing the services, regulation of rates, establishment of safety and insurance requirements and any other requirement adopted to ensure safe and reliable passenger transportation services. Subsection (c) provides that in so regulating, the municipality is performing a governmental function and that a municipality may carry out the provisions to the extent deemed necessary and appropriate.

- **Animals at Large.**[79] Type A General Law Municipalities may prohibit or otherwise regulate the running at large of horses, mules, cattle, sheep, swine, or goats. This does not mean that another General Law Municipality or Home Rule cannot regulate animals at large; rather, they must do so under the general nuisance provisions.

  The 79th Texas Legislature enacted HB 825 which makes it an offense to interfere with an animal control officer while the officer is engaged in duties relating to the treatment or regulation of animals.

- **Animal Drives.**[80] Type A General Law municipalities may prohibit or otherwise regulate the driving of cattle, horses, or other animals in the municipality.

- **Handicap Parking**. Local authorities may designate parking spaces for persons with disabilities provided that such spaces conform to the American National Standards Institute standards and specifications adopted by the Texas Commission of Licensing and Regulation relating to the identification and dimensions of such parking spaces.[81]

G. ORDINANCES WITH CIVIL ABATEMENT OPTIONS

1. Junked Vehicles

State law outlines the notice requirements, defines the offense and outlines the penalty for the criminal punishment or civil abatement of junked vehicles. Local

governments are limited to state law remedies in this instance; however, the local government can determine whether to seek criminal penalties or civil abatement and provide for additional definitions or procedures where state law has not addressed the specific issue.

a. Definition

Junked Vehicle is defined as a vehicle that is self propelled and does not have lawfully attached to it:

an unexpired license plate; ***or***

a valid motor vehicle inspection certificate; ***and is***

wrecked, dismantled or partially dismantled or discarded; ***or***

inoperable and has remained inoperable for more than:

72 consecutive hours, if the vehicle is on public property; or
30 consecutive days if the vehicle is on private property[82]

The new definition is more restrictive thus necessitating changes in ordinances for those cities who have adopted an ordinance tracking state law. Under the former law, a junked vehicle was one that was legally inoperative, interpreted by many municipalities to be either legally (no valid inspection sticker) or mechanically (wrecked or dismantled) inoperable. The new law requires both legal and mechanical inoperability.

Recently, the Texas Legislature added:

> An ordinance adopted by a governing body of a municipality may provide for a more inclusive definition of junked vehicle subject to regulation under this subchapter.[83]

The purpose is to provide the authority of municipalities to provide for additional regulations not currently in the statutes.

b. Offense

An offense occurs if the junked vehicle constitutes a public nuisance. A junked vehicle is declared to be a public nuisance if:

- the junked vehicle, including a part of the junked vehicle is visible at any time of the year from a public place or public right-of-way:

- is detrimental to the safety and welfare of the public;
- tends to reduce the value of private property;
- invites vandalism;
- creates a fire hazard;
- is an attractive nuisance creating a hazard to the health and safety of minors;
- produces urban blight adverse to the maintenance and continuing development of municipalities; and
- is a public nuisance.[84]

c. Exceptions

A junked vehicle is not one which is:

- lawfully enclosed where it is not visible from the street or other public or private property;
- stored or parked in a lawful manner on private property in connection with junkyard business; or
- an unlicensed, operable or inoperable antique, special interest or custom vehicles stored by a collector on their property provided that
  - the vehicles and the outdoor storage are maintained so as not to constitute a health hazard; and
  - are screened from ordinary view by means of a fence, rapidly growing trees, shrubbery and other appropriate means.[85]

d. Proceedings

(1) Criminal Proceedings

- Fines not to exceed $200.00
- Court shall order abatement and removal of the nuisance upon conviction.

(2) **Civil**

No notice is required unless abatement procedures are involved.

- Notice of the nature of the nuisance must provide not less than ten (10) days
  - By certified mail return receipt with a 5 day return or personally delivered
    - notice may be placed on the junked vehicle if the last known registered owner's address is unknown
  - to the last-known registered owner of the junked vehicle, any lienholder of record *and* the owner/occupant of the premises on which the public nuisance exists
    - if on a public right-of-way, the adjacent property owner/occupant shall be notified
- Notice shall state
  - the nature of the public nuisance;
  - that it must be abated within the 10 day notice period as calculated from the date of receipt; and
  - that a request for hearing must be made before the expiration of the 10 day period.[86]
- If the notice is returned undelivered, the abatement action must be continued until not earlier than the eleventh day after the return date.

e. **Public hearing.** Shall be held upon the written request of the owner or occupant of the premises by the Chief Building Official or other official designated by the City Council.

f. **Right of Entry**

Persons authorized to administer this section may enter upon private property to identify a junked motor vehicle and remove or cause to be removed a junked motor vehicle declared to be a nuisance.[87] Only regular, salaried, full-time employees of the City may administer the abatement

and removal procedure; however, any authorized person may remove the nuisance.[88]

g. **Presumption**[89]

It is presumed that the junked motor vehicle is inoperable unless demonstrated otherwise by the owner.[90]

2. High Weeds and Grass and Unsightly/Unsanitary Matter

The City Council may:

- require the filling, draining, and regulating of any place in the municipality that is unwholesome, contains stagnant water, or is in any other condition that may produce disease;
- require the inspection of all premises;
- impose fines of the owner of premises on which stagnant water is found;[91]
- require the owner of a lot in the municipality to keep the lot free from weeds, rubbish, brush, and other objectionable, unsightly, or unsanitary matter.[92]
    - The City may abate, without notice, weeds that have grown higher than 48 inches and constitute an immediate danger to the health and safety of any person. The City must give the property owner notice, within 10 days of the abatement. The City must also, upon written request by the owner filed within 30 days of the abatement, conduct an administrative hearing regarding the abatement.[93]
- regulate the cleaning of a building, establishment, or ground from filth, carrion, or other impure or unwholesome matter.[94]

State law gives the parameters of what the municipality can regulate without specifics or specific violations; therefore, the City Council has more discretion in creating the ordinance. The ordinance may define the elements of the offense, for example:

> It shall be unlawful for any person owning, claiming, occupying or having supervision or control of any real property, occupied or unoccupied to permit weeds, brush or any objectionable or unsightly vegetation to grow to a height greater than 12 inches within 150 feet of any property line which abuts streets, rights-of-way, alleys, utility easements, subdivided additions, developed property or any buildings or other structures.[95]

* * *

It shall be unlawful and declared a nuisance for any person owning, claiming, occupying or having supervision or control of any real property, occupied or unoccupied,

- includes record owner or tenant
- to permit or allow
- any stagnant or unwholesome water, sinks, filth, carrion, weeds, rubbish, brush and refuse, impure or unwholesome matter of any kind or objectionable, unsightly or unsanitary matter of whatever nature to accumulate or remain thereon.[96]

It is further prohibited for any person to throw, deposit or sweep any of the above prohibited matter into, upon or along any drain, gutter, alley, sidewalk, street, park, right-of-way or vacant lot, or upon any public or private premises.[97]

* * *

Any such person must remove, drain and/or fill all prohibited matter or conditions and to cut and remove all weeds, brush, and other objectionable or unsightly vegetation as often as may be necessary to comply with the above and use every precaution to prevent the same from occurring or growing on such premises.[98]

State law dictates the requisite notice for abatement of a nuisance defined under these provisions. Specifically:

Any person failing to comply must be given notice

- personally to the owner in writing
- by letter addressed to owner at post office address
  - does not require certified mail
- If the above cannot be accomplished, then by
  - publication at least once;
  - posting notice on or near the front door of each building; or

- posting the notice on a placard attached to a stake driven into the ground on the property, if there are no buildings.[99]

If notice is mailed in accordance with the above, and the Postal Service returns the notice as "refused" or "unclaimed," the notice is considered valid and delivered.[100]

If the person fails or refuses to comply within 7 days after the date of notification, the City may go upon the property and do or cause to be done the work necessary to achieve compliance.[101] State law provides for a one-year notice provision; specifically

- the City, in the notice, may inform the owner by certified mail, return receipt requested that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice that the City, without further notice, may correct the violation at the owner's expense and assess the expense against the property. [102] If a violation covered by a notice occurs within the one-year period, and the City has not been informed in writing by the owner of an ownership change, then the City, without notice, may take any corrective action and assess its expenses.

There is no abatement hearing required unless due to serious health and safety concerns abatement came before notice; however, some courts utilize the deferred adjudication procedures to require abatement in exchange for a reduced fine. In some cases, a hearing may be recommended to abate a nuisance, such as for the abatement of a swimming pool, where draining the pool might cause serious damage.

H. ADMINISTRATIVE HEARING

Municipalities are authorized to provide for an alternative administrative procedures, by ordinance, to follow Section 54.044 of the Local Government Code, under which administrative penalties may be imposed for the enforcement of said ordinance.[103] A city may now adopt a procedure for an administrative adjudication hearing under which an administrative penalty could be imposed for enforcement of an ordinance under Section 54.032 or adopted under Section 214.001 of the Local Government Code. The procedure must provide for due process, *i.e.*, a hearing and an opportunity to be heard. Further, the procedure must provide for a time frame within which a hearing is to be held, the appointment of a hearing officer with authority to administer oaths and issue orders compelling the attendance of witnesses and production of documents and the amount and disposition of administrative penalties, costs and fees. A municipal court[104] may enforce the administrative hearing officer's orders for witnesses and documents. The summons or citation[105] must advise the person violating the ordinance of the right to a hearing, the date and time of the hearing. The summons or citation is kept as a City record and is a

rebuttable proof of the facts stated therein. The statute further provides that a person charged with violating the ordinance who fails to appear at the hearing is considered to have admitted liability for the violation charged.[106] At the hearing, the administrative hearing officer is to determine and issue an order stating whether the person violated the ordinance and the amount of the penalty, costs and fees to be assessed. The order is to be filed with the City Secretary and may be enforced in a civil collection suit or by obtaining an injunction prohibiting or requiring specific conduct.[107] The decision of the administrative hearing officer is appealable to the municipal court within 31 days of the date the order is filed.[108] The appeal does not stay enforcement and collection, unless a bond is posted with an agency designated for that purpose.[109]

I. CHALLENGES TO ORDINANCES

A party attacking the validity of a municipal ordinance bears an extraordinary burden to establish that no conclusive or even controversial or issuable fact existed that authorized the enactment of the ordinance.[110]

Moreover, it is well established that a court of equity may not enjoin a penal ordinance unless: (1) the ordinance is unconstitutional or otherwise void; (2) the complainant has a vested property right affected by the ordinance; and (3) the enforcement of the ordinance causes irreparable injury to a vested property right.[111]

1. Constitutional Challenges

Constitutional challenges to an ordinance can run the gamut from facial invalidity to substantive due process to procedural due process to equal protection to taking of property, to name a few. The nature of this paper precludes a full blown discussion of each challenge; however, I have attempted to provide a brief summary of each to familiarize you with the basic concepts as applied to ordinances.

The Texas Civil Practice and Remedies Code provides, in pertinent part, that if a "statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state must . . . be served with a copy of the proceedings and is entitled to be heard."[112] If a plaintiff challenges the constitutionality of a municipal ordinance or state statute, he is required to serve the Attorney General with a copy of his petition to maintain his constitutional challenge to the ordinance or statute.

A court is without jurisdiction to grant either declaratory or injunctive relief until such time as the Attorney General has been served, and has been given an opportunity to enter an appearance and to be heard by the court. Indeed, the failure to serve the Attorney General within a reasonable time dictates dismissal of a plaintiff's action.[113]

a. Facial Invalidity

It is unlikely a municipal court would ever see a facial challenge to an ordinance because any constitutional challenge will likely be "as applied" to a particular defendant in a particular instance.

A statute, or an ordinance, may be challenged on the basis that it is invalid on its face. "[A] holding of facial invalidity expresses the conclusion that the statute could never be applied in a valid manner." [114]"A 'facial challenge' means a claim that the law is 'invalid in toto -- and therefore incapable of any valid application.'"[115] Where a decision turns on the meaning of words in a statute or regulation, a legal question is presented for the court to decide.[116]

Thus, "[a] facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid."[117] "For a facial challenge, the remedy is the striking down of the regulation."[118] "[W]hen a landowner makes a facial challenge, he or she argues that any application of the regulation is unconstitutional; for an as applied challenge, the landowner is attacking only the decision that applied the regulation to his or her property, not the regulation in general."[119]

b. Substantive Due Process

Unless a fundamental right is involved, the doctrine of substantive due process, both under the federal and Texas Constitutions, requires only that a governmental decision be rationally related to a legitimate governmental purpose and that there be a reasonable fit between the governmental purpose and the means chosen to advance that purpose.[120]

- **Rational Basis Test**

  A court should not set aside a governmental decision for a substantive due process violation unless the decision "has no foundation in reason and is a mere arbitrary or irrational exercise of power having no substantial relation to the public health, morals, the public safety or the public welfare in its proper sense." [121] Economic and public safety legislation, will survive a substantive due process challenge if it is designed to accomplish an objective within the government's police power and if a rational relationship exists between the legislation and its purpose.[122] This deferential inquiry does not focus on the ultimate effectiveness of the decision, but on whether the enacting body could have rationally believed at the time of the enactment of the legislation that it would promote its objective.[123] If it is at least fairly

debatable that the decision was rationally related to a legitimate governmental interest, the decision must be upheld.[124]

- **Property Interests**

As a threshold matter to any challenge under the substantive due process clause, as well as the majority of constitutional challenges, a plaintiff must show that he has been deprived of a constitutional or statutory right.[125] As noted by the United States Supreme Court[126] "[t]o have a property interest in a benefit, a person . . . must have more than a unilateral expectation of it." Property interests "are defined by existing rules or understandings that stem from an independent source such as state law . . . rules or understandings that secure certain benefits and that support claims of entitlement to those benefits."[127]

- **Legislative Presumption of Validity**

Notwithstanding the protections of the Due Process Clause, it is well-established that government remains free to adjust the burdens and benefits of economic life as long as it does so in a manner that is neither arbitrary nor irrational.[128] In cases where it is clear that no fundamental right is implicated,

> the due process clause, of its own force, requires at a minimum that state action be supported by some legitimate goal and that the means chosen for its achievement be rational, *i.e.*, it is of no consequence that the state's method is over-inclusive or under-inclusive, so long as its legitimate goal may be attained by the means chosen.[129]

c. Procedural Due Process

Generally, if an individual is deprived of a property right, the government must afford an appropriate and meaningful opportunity to be heard to comport with procedural due process.[130] This general rule does not apply, however, when a governmental body enacts generally applicable legislation since there are no constitutional limitations on the procedures by which government enacts legislation.

"It is an established constitutional principle that procedural due process attaches only to administrative or adjudicatory action by the state, and not to legislative action."[131] Consequently, the procedural protections of due process do not extend to all deprivations of otherwise protected property interests. Deprivations which occur as a result of a legislative act are not subject to the procedural requirements of due process.[132]

d. Equal Protection

The equal protection clause of the Fourteenth Amendment commands that no State shall "deny to any person within its jurisdiction the equal protection of the laws," which essentially is a direction that all persons similarly situated should be treated alike.[133] The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest.[134] When social or economic legislation is at issue, the equal protection clause allows the states wide latitude,[135] and the Constitution presumes that even improvident decisions eventually will be rectified by the democratic process.[136]

- **Strict Scrutiny vs. Rational Basis**

The general rule gives way, however, when a statute or ordinance classifies by race, alienage or national origin. These laws are subjected to strict scrutiny and will be sustained only if they are suitably tailored to serve a compelling state interest.[137]

An ordinance or other legislative enactment that does not burden a suspect class or a fundamental interest should not be overturned "unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the [governing body's] actions were irrational."[138] The same requirements are applied to equal protection challenges under the Texas Constitution as those under the United States Constitution.[139] An as-applied equal protection claim requires that the government treat the claimant different from other similarly-situated persons without any reasonable basis.[140]

- **Standard of Review**

If no suspect class or fundamental right is involved, the same deferential standard that was previously discussed regarding substantive due process claims is equally applicable to an equal protection claim

> Whether embodied in the Fourteenth Amendment or inferred from the Fifth, equal protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld

> against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. Where there are "plausible reasons" for [government] action, "our inquiry is at an end." This standard of review is a paradigm of judicial restraint. "The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted."[141]

Those attacking the rationality of a legislative classification have the burden to negate every conceivable basis which might support the classification.[142] The governing body is not even required to articulate the reasons for such legislation since it is entirely irrelevant for constitutional purposes whether the conceived reason for the ordinance actually motivated the governing body.[143] Moreover, "a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data."[144]

- **Solution Need Not be Perfect One**

Additionally, the equal protection clause does not prohibit government from enacting legislation that is aimed at only one particular actor or group of actors as long as that classification meets the minimum standards of constitutional rationality.

> [L]egislators may enact generally applicable legislation as a prophylactic to the danger posed by one particular actor as long as the end of the legislation is legitimate and, assuming the legislation does not distinguish between classes on bases susceptible to intermediate or strict scrutiny, the means are rationally related to the end. In other words, the fairness of which [the plaintiff] speaks [in its equal protection challenge] is always determined, in cases of low-level scrutiny, by the rationality of the state action, whether the questioned action is the enactment of an ordinance or the enforcement of it.[145]

e. Taking of Property

Regulatory legislation is often challenged as an unconstitutional taking of property. A successful takings claim, however, does not invalidate the legislation. The Constitution does not prohibit takings; rather, it requires that the government compensate the persons whose property was taken.

- **Private Real Property Rights Preservation Act**[146]

The Act has set forth a statutory definition of a taking that encompasses any action (with several specified exceptions) taken by particular governmental entities that results in a 25% or more devaluation of a person's private real property.

The taking analysis, however, cannot stop with the Act. Both the Texas and United States Constitutions prohibit the taking of property without just compensation.

- **Federal Takings**

In any taking analysis, the initial inquiry is whether the challenged governmental action advances a legitimate public interest.[147] The second step in a taking analysis examines whether the challenged governmental action denies an owner the economically viable use of his property.[148] In reviewing this part of the taking analysis, it is important to note that the Fifth Amendment's prohibition against taking without compensation does not guarantee the most profitable use of property,[149] and a diminution in value, standing alone, does not establish a taking.[150] Taking issues must be resolved by focusing not on the uses regulations deny, but rather on the uses that regulations permit.[151] As stated:[152]

> By its nature, zoning "interferes" significantly with owners' uses of property. It is hornbook law that "[m]ere diminution of market value or interference with the property owner's personal plans and desires relative to his property is insufficient to invalidate a zoning ordinance or entitle him to a variance or rezoning."[153]

Under federal law, a land use regulation generally does not constitute a taking unless it deprives the property owner of all use of the property.[154]

Although the Supreme Court has yet to define the meaning of the term "economically viable use," the term appears to have nothing to do with whether a landowner realizes a profit on his

investment.[155] The Supreme Court discussed the "economically viable use" concept with reference to the defendant's evidence that, because of prior investments in the property, it would not be profitable to develop the land with the 67 dwelling units the Planning Commission was willing to approve.[156] The Supreme Court refused to equate the concept of "economic feasibility" with the concept of "profitability."

- **State Takings**

While the above discussion gives a broad overview of the possible avenues of attack against government regulations under both the Texas and Federal Constitution, the Texas Supreme Court's recent decision in *Mayhew*,[157] is worthy of a closer look, given that it is the Texas Supreme Court's latest and most exhaustive discussion of these constitutional concepts.

The Texas Supreme Court in *Mayhew*, relying extensively on federal cases with respect to land-use constitutional claims[158] indicated that in any taking analysis, the initial inquiry is whether the challenged governmental action substantially advances a legitimate public interest. The second step in the taking analysis examines whether the challenged governmental action denied the property owner all economically viable use of its land.[159]

The legitimacy prong of a regulatory takings analysis requires a court to identify whether the challenged regulation substantially advances a legitimate governmental interest. The *Mayhew* Court indicated that "a broad range of governmental purposes and regulations" will pass this constitutional muster given the variety of legitimate state interests available to governmental entities, including protecting residents from the "ill-effects of urbanization," "enhancing the quality of life," "precluding the conversion of open-space land to urban uses," "preserving desirable aesthetic features," and "controlling both the rate and character of community growth."[160]

The *Mayhew* Court held that even if a governmental action substantially advances a legitimate state interest, that "[a] compensable regulatory taking can also occur when governmental agencies impose restrictions that either (1) deny landowners of all economically viable use of their property, or (2) unreasonably interfere with landowners' rights to use and enjoy their property."[161] In determining whether a restriction denies a landowner of all economically viable use of the property, a court must determine whether the restriction renders the property

valueless or, in other words, whether any value remains in the property after the governmental action.[162]

To determine whether the government has unreasonably interfered with the landowner's rights to use and enjoy property, the Court noted the importance of two factors: "the economic impact of the regulation and the extent to which the regulation interferes with distinct investment-backed expectations."[163] In analyzing the first factor, the economic impact of the regulation, the Court indicated that it was appropriate to compare "the value that has been taken from the property with the value that remains in the property."[164] The Court admonished, however, that "[t]he loss of anticipated gains or potential future profits is not usually considered in analyzing this factor."[165] The *Mayhew* Court's analysis is consistent with federal law in this area.

f. Test for Constitutionality

In determining the constitutionality of an ordinance or other legislative act, a court is guided by the rational basis test under both the due process and equal protection clauses to the United States Constitution.[166] Ordinances may be held unconstitutional only if they are shown to bear no possible relationship to the state's interest in securing the health, safety, morals or general welfare of the public and are clearly arbitrary and capricious.[167]

g. Test: Arbitrary and Capricious

In determining whether the Ordinance is arbitrary and capricious, and thus violative of the due process and equal protection clauses to the United States and Texas Constitutions, the court must inquire whether there was a conceivable or even hypothesized factual basis for the City's enactment of the Ordinance.[168] The Court is **not** to determine whether the City's decision was the best course for the community, which effect would be to move the decisionmaking function from the City Council to the Court.[169] Justice Higginbotham, writing for an *en banc* court, specifically disapproved of judicial inquiries into legislative or executive motivation.

> By sharply cutting the deference due state decisions, it would inject federal courts into matters historically the business of states and subject to their police power. It would, more specifically, alter the decisional processes for zoning issues. The difference between an inquiry into whether there was any possible rational basis for legislation and inquiry into the actual basis of legislation is significant. A court's assumption of the power to decide between competing legislative proposals or to require the state to

> prove the validity of its choice is quickly the right to change the legislative process itself. . . .
>
> We hold that the outside limit upon a state's exercise of its police power . . . is that they must have a rational basis. . . . Aware of no good reason to alter settled constitutional law, we decline to set out on the path proposed by the dissent.[170]

Justice Higginbotham further cautioned that the court did "not suggest that a [municipal] decision can be justified by mouthing an irrational basis for an otherwise arbitrary decision. A denial of a building permit on the King Ranch because of inadequate parking might fall into this category. The key inquiry is whether the question is 'at least debatable.'"[171]

g. Fourth Amendment Seizure

Under an ordinance adopted in accordance to Chapter 214 of the Texas Local Government Code, after a hearing and an opportunity to be heard, a municipality may order that the owner demolish a structure or upon the failure to do so, the municipality may take the appropriate action. In 1999, the Fifth Circuit had an opportunity to review and rule upon an ordinance adopted under Chapter 214 in *Freeman v. City of Dallas*[172], a case involving the demolition of substandard structures. The Court, as a threshold determination, acknowledged that the demolition of a structure constituted a "seizure" of property within the purview of the Fourth Amendment. However, the Fourth Amendment does not state that there shall be no seizure without a warrant; rather, the Fourth Amendment prohibition is couched in terms that there shall be no "unreasonable" searches or seizures. The next inquiry for the Court was whether the seizure was "unreasonable."

To determine the reasonableness of the seizure the Court examined the procedures under state law and the City of Dallas' ordinances. That process provided for "reasonable notice to and time limits upon landowners' actions, multiple hearing possibilities, flexible remedies, and judicial review in state court . . ."[173] The Court determined that the process, along with the defined standards in the municipal code for finding that a structure is a nuisance, offered greater protection against unreasonable actions than an application for a warrant before a judge (which is usually done without notice to the landowner or the opportunity to participate).[174]

2. Lack of a Culpable Mental State

An ordinance that does not express a culpable mental state is not necessarily unconstitutionally vague. The Penal Code provision, Section 6.02 will provide the appropriate culpable mental state unless the ordinance clearly dispenses with

it.[175] If enforced without a culpable mental state, it would be unconstitutional, again, unless the ordinance clearly dispenses with the requirement.[176] HB 970, effective September 1, 2005, applies to offenses committed after the effective date, and requires a culpable mental state be articulated for any offense where the fine exceeds $500.00.

3. Vagueness: Offense not defined

An ordinance that proscribes certain conduct must be sufficiently definite to give person of ordinary intelligence fair notice that contemplated conduct is prohibited.[177] It does not require mathematical precision, rather, the ordinance must give ***fair warning*** of the proscribed conduct in light of common understanding and practice.[178] An ordinance may be declared void for vagueness if it fails to give fair notice of the proscribed conduct and if its application causes arbitrary and erratic arrests or convictions.[179] For example, an ordinance was unconstitutionally vague and overbroad to the extent it made it unlawful for a person to be in or about private or public buildings at nighttime, where the individual had no right or permission to be, under suspicious circumstances and "without being able to give satisfactory account of same" because the last provision gave unrestrained and unguided discretion to an officer of whether an answer was satisfactory.[180] However, an ordinance is not necessarily unconstitutionally vague merely because words or terms are not specifically defined. An ordinance making it unlawful for any person to keep or harbor any dog which makes frequent or long continued noise which is disturbing to persons of normal nervous sensibilities was not unconstitutionally vague for lack of defined terms. The terms could be defined by use of a dictionary and the provision did not reach constitutionally protected conduct.[181]

IV. POST CONVICTION OPTIONS

A. DEFERRED DISPOSITION

Deferred Disposition can be utilized as a very creative tool to achieve compliance. A sample form is attached hereto for your use and modification. One court puts the individual on a 6-month deferred program and requires a monthly appearance to ensure progress. The court reduces the fine in the hopes that the monies will be used to abate the nuisance. Failure to comply with the terms or conditions, after a show cause hearing, the remaining balance of the fines may be imposed as a penalty.

B. REQUIRED COURT APPEARANCE FOR HABITUAL VIOLATORS

Code Enforcement Officers issue subsequent offense notifications. Any violator who has a subsequent offense is required to appear in court and cannot simply pay the set window fine.

C. ENHANCED PENALTIES

The court has increased the window fines for subsequent offenses up to the maximum amount as an additional deterrent to continued violations.

D. DAILY CITATIONS

Most ordinances allow for citations to be issued for every day that a violation exists or occurs. In one case, a citation was issued for each balloon that a car dealership flew in violation of the City's sign ordinance. The dealership had made payment of the fine part of their advertising cost. The City got their attention when the $114.00 check was returned and over $5,000.00 demanded for the fines and fees.

E. MANDATORY PRETRIALS WITH PROSECUTOR

Code Enforcement is present at these meetings and the judge is available to rule on a motion or issue any orders. The prosecution makes available to the defendant all evidence of the violation and the defendant has an opportunity to discuss the issues with city staff in the hope of gaining cooperation in the elimination of the nuisance situation.

F. PLEAS AND PAYMENT WITHOUT COMPLIANCE

What can be done to a defendant who pleas guilty and pays the window fine? Does the judge have to accept the plea and assess the window fine? May the prosecutor put on evidence to enhance the window fine penalty? After a jury is impaneled, or waived by the defendant, the defendant may plead guilty or no contest.[182] However, proof of the offense may be heard upon the plea and punishment assessed by the Court.[183]

V. INVESTIGATIVE OPTIONS

A. ADMINISTRATIVE SEARCH WARRANTS- CODE BASED WARRANTS

1. Warrants for Fire, Health and Code Inspections[184]

a. may be issued to the fire marshal, health officer or code enforcement officer:

- for the purpose of allowing the inspection of any specified premises;
- to determine the presence of a fire or health hazard or unsafe building condition or a violation of any fire, health or building regulation, statute, or ordinance.[185]

b. may only be issued upon the presentation of evidence of probable cause to believe that such a condition is present, on the premises sought to be inspected.[186]

c. Probable cause may be based upon

- age and general condition of the premises;
- previous violations or hazards at same location;
- type of premises;
- purposes for which premises are used; and
- presence of hazards or violations in and the general condition of premises near the location sought to be inspected.[187]

d. A City may designate one code enforcement official for the purpose of being issued a search warrant.[188]

2. Administrative Warrants

- A home rule city can enact an ordinance providing for administrative search warrants to ensure compliance with enforcement of city codes enacted to protect the health, safety, and welfare of its inhabitants.
- Such administrative search warrants may be issued only upon sworn affidavit supported by probable cause and may authorize inspection of premises to determine the presence of any code violations.
- Such an ordinance is in compliance with Article 18.05 of the Code of Criminal Procedure.
- The Attorney General wrote that the issuance of an administrative search warrant by a home rule city to be a reasonable exercise of its general police powers to protect the public health, safety and welfare.
- An administrative search warrant differs from an evidentiary search warrant, because the former can only be issued for the purpose of allowing an inspection of specific premises to determine the presence of hazardous conditions prohibited by law.

- Differs from a criminal search warrant which may be issued only upon a finding of probable cause supported by affidavit that a criminal offense has been committed and that certain specified property is therefore subject to seizure. A criminal search warrant may also order the arrest of the suspected offender.

CONCLUSION

In sum, given its exclusive jurisdiction, a municipal court is likely to see many ordinance violations pertaining to a multitude of public health and safety concerns. A creative effort to resolve the compliance issues, utilizing all the tools available, will ensure a safer and healthier community.

EXHIBIT 1

In Re:	§	MUNICIPAL COURT
	§	
[Address]	§	
[Owner's Name]	§	
	§	
Abatement of Junked Vehicles	§	[_____] COUNTY, TEXAS

ADMINISTRATIVE DETERMINATION AND ORDER

On or about _____, 200_, came onto be heard, before the Municipal Court for the _____, an administrative proceeding for the abatement of specified identified junked vehicles as determined by the _____ Code Enforcement officers. Upon presentation of the evidence, and hearing of argument, the Court makes the following findings and orders:

1. On or about _____, Code Enforcement Officers conducted an inspection of the premises at_____, being Lot__, Block __,_____ Addition, within the corporate city limits of the _____, relative to complaints that junked vehicles were being stored on the property. The City determined such junked vehicles constituted a public nuisance as defined by Section _____of the Code of Ordinances and should be abated.

2. _____ is the owner of the property located at _____ and is the responsible party for the keeping of junked vehicles on the premises.

3. On-going inspections since to date have determined that the junked vehicles continue to be stored on the property in violation of City ordinance, to wit: Section ____ of Chapter ___. Specifically, on or about _____, 200_, officers entered upon the property for the purpose of identifying junked vehicles. The inspection revealed a multitude of junked vehicles located on the property, identified as follows:

   [Identify Vehicle by License Plate Number, Vehicle type, make, model, color and/or VIN)

4. On or about _____, 200_, Mr. _____ was notified via certified mail, return receipt requested, and regular mail, of the nuisance, and that said nuisance must be abated and removed not later than 10 days from the date on which notice was mailed.

5. On or about _____ 200_, Mr. _____ was sent notification of hearing before the Municipal Court, by certified mail return receipt requested and regular mail, to consider the possible removal of junked vehicles and used vehicle components from the property, in accordance with Section _____ of Chapter____ of the Code of Ordinances.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above-referenced vehicles are junked vehicles as defined by Section _____ of the Code of Ordinances; and

It is further ORDERED that the above-referenced junked vehicles be abated and removed from the property; and

It is further ORDERED that the above-referenced junked vehicles shall not be reconstructed or made operable after removal; and

It is further ORDERED that the City provide the requisite notice identifying the vehicle or part of the vehicle to the Department of Public Safety not later than the fifth day after the date of removal, requesting that the Department immediately cancel the certificate of title issued for said vehicle; and

It is further ORDERED that the City may dispose of the junked vehicles, or parts thereof, to a scrap yard, motor vehicle demolisher or a suitable site operated by the City or County.

SO ORDERED.

Dated this _____ day of _____, 200_.

_____
Judge of the Municipal Court

THE STATE OF TEXAS	§	A PROPERTY LOCATED AT:
	§	[property address]
	§	
COUNTY OF _____	§	_____ COUNTY, TEXAS

JUDICIAL WARRANT

The State of Texas, to any peace officer of_____ County, State of Texas:

WHEREAS, the Affiant whose name appears on the attached affidavit is the [Affiant's title] for the [Department name], City of _____, _____ County, Texas, and did heretofore this day submit said Affidavit to me (which said Affidavit is by this reference incorporated herein for all purposes), and whereas I find that the verified facts stated by Affiant in said Affidavit show that the Affiant has probable cause for the belief [he/she] expresses therein and establishes the existence of proper grounds for the issuance of this Warrant.

NOW THEREFORE, you are commanded to enter upon [Address], _____ County, Texas and seize the structure located on this property by demolition.

NOW THEREFORE, you are ordered to execute this Warrant.

ISSUED THIS THE _____ day of _____, A.D., 200_, at _____ o'clock ___.m. to certify which witness my hand this day.

_____
Magistrate, _____ County, Texas

THE STATE OF TEXAS	§	A PROPERTY LOCATED AT:
	§	[property address]
	§	
COUNTY OF _____	§	_____COUNTY, TEXAS

RETURN OF WARRANT

The undersigned Affiant, being a peace officer of _____ County, State of Texas, on oath certifies that the foregoing warrant came to hand on the day it was issued and that it was executed on the _____ day of _____, 200_, by seizing the structure located at [Address], _____,_____ County, Texas by demolition.

_____
[Affiant], [Title]

SUBSCRIBED AND SWORN TO BEFORE ME, on the _____ day of _____, A.D., 200_ at _____ o'clock ___.m. to certify which witness my hand and official seal.

_____
Notary Public in and for the State of Texas

My Commission Expires:
_____

THE STATE OF TEXAS	§	A PROPERTY LOCATED AT:
	§	[property address]
	§	
COUNTY OF _____	§	_____ COUNTY, TEXAS

AFFIDAVIT OF INSPECTION

BEFORE ME, the undersigned authority, this day personally appeared the undersigned affiant, a person whose identity is known to me. After I administer an oath to him, upon his oath, he said:

1. My name is [affiant]. I am a [title] for the [Department name], City of _____, Texas.

2. On [Date], I reinspected the property located at [address] and found that the structure had not been demolished and no repairs had been made.

3. I affirm that this information is true and correct on this _____ day of _____, A.D., 200_.

_____
[Affiant], [Title]

Before me, [Name] subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

SUBSCRIBED AND SWORN TO BEFORE ME, on the ____ day of _____, A.D., 200_ at _____ o'clock ___.m. to certify which witness my hand and official seal.

_____
Notary Public in and for the State of Texas

My Commission Expires:

_____

THE STATE OF TEXAS	§	A SINGLE FAMILY RESIDENCE
	§	LOCATED AT:
	§	
	§	_____,
COUNTY OF _____	§	_____ COUNTY, TEXAS

ADMINISTRATIVE SEARCH WARRANT

THE STATE OF TEXAS to the Sheriff or any Peace Officer of _____ County, or the State of Texas, and/or Code Enforcement Official of the City of_____.

GREETINGS:

WHEREAS, the Affiant, whose signature is affixed to the Affidavit attached hereto (which said Affidavit is by this reference incorporated herein for all purposes), is a person duly authorized by law to make inspections of premises for the purpose of enforcing health, fire, or building regulations, statutes or ordinances, and did heretofore this day subscribe and swear to said Affidavit before me.

WHEREAS, I find that the verified facts stated by Affiant in said Affidavit show that Affiant has probable cause for the belief he expresses therein and establishes the existence of proper grounds for the issuance of this Warrant;

NOW, THEREFORE, you are hereby commanded to enter the location set forth in the Affidavit as the location of the single family dwelling premises located at _____, _____, _____County, Texas, said premises being described as _____ and search and inspect said premises to determine the existence of any violation of health, fire or building regulations, ordinances, or statutes.

WITNESS my signature on this the _____ day of _____, A.D. 20___ at _____ o'clock __ .m.

_____

MAGISTRATE, _____ COUNTY, TEXAS

RETURN

THE STATE OF TEXAS	§	A SINGLE FAMILY RESIDENCE
	§	LOCATED AT:
	§	
	§	_____,
COUNTY OF _____	§	_____ COUNTY, TEXAS

The undersigned Affiant, being a Peace Officer/Code Enforcement Official under the laws of Texas and being fully sworn, under oath certifies that it was executed on the _____ day of _____, 20_____, by making the search directed therein at the said premises to determine the existence of any violation of health, fire, or building regulations, ordinances or statutes.

_____
AFFIANT

SUBSCRIBED AND SWORN to before me, the undersigned authority, on this the ____ day of _____, 20_____.

_____
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

AFFIDAVIT

CAME UNTO me this day, _____, a person known to me and upon oath swears as follows:

"My name is _____. I am over the age of 18, have personal knowledge of the facts asserted below, and am competent to testify to those facts:

_____

_____

_____

_____

_____.

_____

SUBSCRIBED AND SWORN TO BEFORE ME, on the _____ day of _____, 20 ___, to certify which witness my hand and official seal.

_____
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

_____
(Print or Type Name)

My Commission Expires:
_____

CAUSE NUMBER (See Listed Citations)

THE STATE OF TEXAS	§	**IN THE MUNICIPAL COURT**
VS.	§	**CITY OF _____**
_____	§	_____**COUNTY, TEXAS**

DEFERRED DISPOSITION ORDER

The court finds that _____, Defendant, having plead guilty/no contest to the following offenses on the following citations and that the punishment has been set at the indicated and corresponding fine amounts:

Citation No.	Fine Amount	Description of Offense
_____	_____	_____
_____	_____	_____

However, under the authority of Art. 45.54, Code of Criminal Procedure, the court orders that the imposition of the fine is suspended until the ___ **day of** _____, **200**__.

DEFERRAL PERIOD: _____, **200**__ **UNTIL** _____, **200**__.

CONDITIONS OF DEFERRED PROBATION

1. Payment of the total amount $_____ must be paid on or before the first day of the deferred period.
2. Junked vehicle, L.P. _____ must be removed within thirty (30) days of commencement of deferred period. Failure of the Defendant to do so, the City may go on to the property and remove the junked vehicle without further court order.
3. If junked vehicle is removed and all terms and conditions satisfied, remaining citations will be dismissed after deferred period.
4. Failure to satisfy all terms and conditions set forth herein will cause the imposition of the remaining balance of the fines as follows:

Citation No.	Fine Amount	Description of Offense
_____	_____	_____
_____	_____	_____

5. Defendant shall NOT be subsequently convicted of any non-traffic, Class C misdemeanor of the same nature as the deferred offense during the above stated deferral period, regardless of final conviction date;

6. Defendant must obtain the final inspection of the [_____] which is the subject of the citations, on or before _____.
7. Defendant must permit code enforcement officers employed by the City to inspect _____ located at _____ for code enforcement violations upon demand from said code enforcement officers
8. Defendant must take the following further actions: _____ _____ _____ _____.
9. _____ agrees and represents that he is the authorized representative for _____ and waives, on behalf of said limited partnership, any additional processes or challenges to deficiency of service upon said corporation, ***if any***.
10. If Defendant successfully complies with the conditions of the agreement, then the pending offense(s) shall be DISMISSED by the court and shall NOT be reported as a final conviction. Failure to comply shall cause said offense(s) to be reported as a final conviction(s) as required by law.

The Court further Orders that if, at the conclusion of this deferral, Defendant presents satisfactory evidence of compliance with the conditions imposed, the complaint will be dismissed and a special expense fee of $_____ will be imposed. This amount may not exceed the set fine.

A COPY OF THIS ORDER WAS DELIVERED TO THE DEFENDANT ON THIS DATE.

Agreed to and signed this the _____ day of _____, 200_.

_____ Defendant's Signature

_____ Municipal Court Judge
City of _____

[1] Texas Code of Crim. Pro., Art. 4.14; *See also* Tex. Local Gov't Code, § 54.001(b) (West 1999).

[2] *Id.*

[3] This may well be a clarification in that the current Section 214.001(p) provides that a hearing may be held by a civil municipal court without distinguishing between a court of record and a court of no record.

[4] Section 54.043 provided for civil adjudicative processes without the detail provided by the new legislation.

[5] There is no distinction made between a municipal court of record and a municipal court of no record.

[6] It is likely this notice should be formatted as a notice of violation, outlining the nature of the violation, referencing the statute or ordinance, and providing the requisite right to a hearing, date and time information.

[7] While this might pass constitutional muster in the administrative proceeding, it would not in a criminal prosecution.

[8] The ordinance should specify when an order is filed for purposes of an appeal, generally recommended to be a notation placed on the order itself, as well as designating an agency for purposes of posting a bond. The statute does not specify the requisite amount of the bond for purposes of staying collection on the judgment; however, under generally civil principles, the amount of the judgment is generally sufficient.

[9] *See* TEX. CONST. Art. XI, § 5. *See also* Tex. Local Gov't Code, § 51.072 (has full power of local self government).

[10] Wilson v. Andrews, 10 S.W.3d 663 (Tex. 1999).

[11] TEX. CONST. Art. XI § 4.

[12] *See generally* Tex. Local Gov't Code, §§ 51.011, 51.032 and 51.051(governing body may adopt ordinance, not inconsistent with state law, deemed proper for municipal government).

[13] Tex. Local Gov't Code, § 51.001 (West 1999).

[14] Tex. Local Gov't Code, § 54.001 (West 1999).

[15] *See* Tex. Local Gov't Code, § 54.002 (West 1999).

[16] Tex. Local Gov't Code, § 54.003 (West 1999). This provision, if enforced, may implicate the separation of powers doctrine.

[17] *See* HB 2270.

[18] *Ex Parte Farley*, 144 S.W. 530 (Tex. Crim. App. 1912); *Ex Parte Goldburg,* 200 S.W. 386, 387 (Tex. Crim. App. 1918).

[19] Tex. Penal Code, § 6.02(c)(West 2004)(emphasis added); *See also Aguirre v. State,* 22 S.W.3d 463 (Tex.Crim.App. 1999); *See also Thompson v. State,* 886 S.W. 388,391 (Tex. Crim.App. 1985).

[20] *See generally* Tex. Local Government Code, Chapter 52.

[21] Tex. Local Government Code, § 51.003 (West Supp. 2001). *Texas River Barges v. City of San Antonio*, 21 S.W.3d 347 (Tex. Civ. App. – San Antonio 2000, *rehearing overruled,and review denied, and reh'g of petition for review denied).*

[22] *Goldblatt v. Hempstead*, 369 U.S. 590, 596 (1962); *United States v. Carolene Products Co.,* 304 U.S. 144, 154 (1938) (exercise of police power will be upheld if any set of facts either known or which could be reasonably assumed affords support for it).

[23] *Brewster v. City of Dallas*, 703 F.Supp. 1260, 1263-64 (N.D. Tex. 1988) (emphasis in original); *see also Price v. City of Junction*, 711 F.2d 582 (5th Cir. 1983) (if reasonable minds may differ as to whether ordinance has substantial relationship to general health, safety and welfare, an issuable fact exists and the ordinance must stand).

[24] *Haynes v. City of Abilene*, 659 S.W.2d 638 (Tex. 1983).

[25] *City of Pharr v. Tippitt*, 616 S.W.2d 173 (Tex. 1981).
[26] *Fair v. City of Galveston*, 915 F. Supp. 873 (S.D. Tex.), *aff'd,* 100 F.3d 953 (5th Cir 1996).

[27] *City of Richardson v. Responsible Dog Owners*, 794 S.W.2d 17 (Tex. 1990).

[28] JC-0048 (1999).

[29] DM-343 (1995).

[30] JM-1278 (1990).

[31] *See Dallas Merchant's & Concessionaire's Assn v. City of Dallas*, 852 S.W.2d 489 (Tex. 1993).

[32] *Freeport v. Vandergriff*, 28 S.W.3d 680 (Tex.App.—Corpus Christi 2000, review denied).

[33] DM-433 (1997).

[34] Tex. Occupations Code, §1952.101 (2003).

[35] Tex. Occupations Code, §1952.002 (2003).

[36] Tex. Occupations Code, §1952.001(3) (2003).

[37] Tex. Occupations Code, §1952.001(2)(2003).

[38] Tex. Occupations Code, §1952.102 (2003).

[39] Tex. Occupations Code, §1952.105 (2003) and 25 TAC §130.20.

[40] Tex. Occupations Code, §1952.103 (2003).

[41] *Id.*

[42] Tex. Occupations Code, §1952.003

[43] As an aside, TML has never supported the idea that code enforcement officers could issue citations upon which warrants could issue. Warrants for code citations should not be issued on failure to appear on the citation; rather, warrants should be issued based upon failure to appear on court summons.

[44] Tex. Occupations Code, §1952.201 (2003).

[45] *Quick v. City of Austin,* 7 S.W.3d 109 (Tex. 1998).

[46] Tex. Local Gov't Code, § 217.002.

[47] Tex. Local Gov't Code, § 217.022.

[48] Tex. Local Gov't Code, § 217.042.

[49] Tex. Atty. Gen. Opinion No. JC-0025 (1999).

[50] Tex. Local Gov't Code § 51.051.

[51] *Hart v. City of Dallas*, 565 S.W.2d 373 (Tex. Civ. App. -- Tyler 1978, no writ).

[52] *Id.*

[53] *PPC Enters., Inc. v. Texas City, Texas*, 76 F.Supp. 2d 750, 756-757 (S.D. Tex. 1999).

[54] TEX. LOCAL GOV'T CODE, § 214.001 (West Supp. 2001).

[55] *Id.*

[56] *See* HB 2270.

[57] *City of Houston v. Johnny Frank's Auto Parts Co.*, 480 S.W.2d 774, 780 (Tex.Civ.App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.).

[58] *Ex Parte Harris*, 261 S.W.2d 1050 (Tex.Crim.App. 1924); *King v. Guerra*, 1 S.W.2d 373, 375 (Tex.Civ.App.-San Antonio 1927, writ dism'd); *Sitterle v. Victoria Cold Storage Co.*, 33 S.W.2d 546, 550 (Tex.Civ.App.-San Antonio 1930, writ dism'd).

[59] Chapter 211, Texas Local Gov't Code.

[60] Tex. Local Gov't Code, § 211.001.

[61] Tex. Local Gov't Code, § 211.003.

[62] Chapter 212 Texas Local Gov't Code.

[63] Tex. Local Gov't Code § 212.002.

[64] Tex. Local Gov't Code, §212.003.

[65] Section 216.003, Tex. Local Gov't Code.

[66] *Lubbock Poster Co. v. City of Lubbock*, 569 S.W.2d 935, 939 (Tex.Civ.App.–Amarillo 1978, writ ref'd n.r.e.), *cert. denied*, 444 U.S. 833 (1979).

[67] *City of Cincinnati v. Discovery Network, Inc.*, 113 S.Ct. 1505, 1516-17 (1993).

[68] *See Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180 (1997); *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

[69] HB 212, relative to Section 216.903 of the Texas Local Government Code.

[70] *Id.*

[71] *Id.*

[72] Tex. Local Gov't Code, § 215.031.

[73] *See e.g. International Society for Krishna Consciousness of Houston, Inc. v. City of Houston, Texas,* 689 F.2d 541 (5th Cir. 1982).

[74] *Id.*

[75] . *See, e.g., Pennsylvania Alliance for Jobs and Energy v. Council of Munhall,* 743 F.2d 182 (3d Cir. 1984) (ordinance prohibiting solicitation after 5 p.m. constitutional); *Westfall v. Board of Commissioners of Clayton County,* 477 F. Supp. 862 (N.D. Ga. 1979) (ordinance prohibiting solicitation after 6 p.m. constitutional); *City of Watseka v. Illinois Public Action Council,* 796 F.2d 1547 (7th Cir. 1986) (ordinance prohibiting solicitation after 5 p.m. not a valid time, place, and manner restriction); *ACORN v. City of Frontenac,* 714 F.2d 813 (8th Cir. 1983) (ordinance prohibiting solicitation after 6:00 p.m. not sufficiently tailored to avoid conflict with First Amendment); *Citizens for a Better Environment v. Village of Olympia,* 511 F. Supp. 104 (E.D. Ill. 1980) (ordinances prohibiting solicitation after 5:00 p.m. and/or after sunset void); *Conn. Citizens Action Group v. Town of Southington,* 508 F.Supp. 43 (D. Conn. 1980) (ordinance prohibiting solicitation after 6:00 p.m. unreasonable burden on free speech rights).

[76] *See generally, Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton,* 122 S.Ct. 2080 (2002)(Court held that a permit requirement for canvassers who distributed handbills or pamphlets promoting any cause was unconstitutional as applied to non-commercial speech).

[77] Tex. Local Gov't Code, § 215.001.

[78] Tex. Local Gov't Code, § 215.004.

[79] Tex. Local Gov't Code, § 215.026.

[80] Tex. Local Gov't Code, § 215.025.
[81] Tex. Transp. Code, § 681.009 and Article 9102 Section 5(i), Revised Statutes.

[82] HB 489, amending Section 683.071 of the Texas Transportation Code

[83] HB 1773, creating a new Section 683.0711.

[84] Transp. Code, § 673.072.

[85] McKinney Code, § 18-279(e).

[86] Tex. Transp. Code, § 683.075.

[87] McKinney Code, § 18-280.

[88] Tex. Transp. Code § 683.074(d).

[89] Tex. Transp. Code, § 683.076.

[90] Tex. Transp. Code, § 683.076(c).

[91] Tex. Health & Safety Code, § 342.001.

[92] Tex. Health & Safety Code, § 342.004.

[93] Tex. Health & Safety Code, § 342.008.

[94] Tex. Health & Safety Code, § 342.003.

[95] McKinney Code, § 20-63.

[96] McKinney Code, § 20-62.

[97] *Id.*

[98] McKinney Code, § 20-64.

[99] McKinney Code, § 20-65.

[100] Tex. Health & Safety Code, § 342.006(c).

[101] *Id.*

[102] Tex. Health & Safety Code, § 342.006(b).

[103] Tex. Transp. Code, § 683.0765; Section 54.043 also provided for civil adjudicative processes.

[104] There is no distinction made between a municipal court of record and a municipal court of no record.

[105] It is likely this notice should be formatted as a notice of violation, outlining the nature of the violation, referencing the statute or ordinance, and providing the requisite right to a hearing, date and time information.

[106] While this might pass constitutional muster in the administrative proceeding, it would not in a criminal prosecution.

[107] Issue: Would this then require a separate Chapter 54 proceeding.

[108] This is novel in that appeals from administrative officer's decisions generally go before the Zoning Board of Adjustment.

[109] The ordinance should specify when an order is filed for purposes of an appeal, generally recommended to be a notation placed on the order itself, as well as designating an agency for purposes of posting a bond. The statute does not specify the requisite amount of the bond for purposes of staying collection on the judgment; however, under generally civil principles, the amount of the judgment is generally sufficient.

[110] *Quick v. City of Austin*, 7 S.W.3d 109 (Tex. 1998).

[111] *State v. Morales*, 869 S.W.2d 941, 942 (Tex. 1994); *Passel v. Fort Worth Indep. Sch. Dist.*, 440 S.W.2d 61, 63 (Tex. 1969); *City of Richardson v. Kaplan*, 438 S.W.2d 366 (Tex. 1969); *State v. Shoppers World, Inc.*, 380 S.W.2d 107, 110 (Tex. 1964); *Grothues v. City of Helotes*, 928 S.W.2d 725, 728 n.3 (Tex.App.-San Antonio, 1996, no writ); *Hang On III, Inc. v. Gregg County*, 893 S.W.2d 724, 726 (Tex.App.-Texarkana 1995, writ dism'd by agr.); *Scurlock Permian Corp. v. Brazos County*, 869 S.W.2d 478, 489 (Tex.App.-Houston [1st Dist.] 1993, writ denied); *Smith v. Copeland*, 787 S.W.2d 420, 421 (Tex.App.-San Antonio 1990, no writ); *City of Houston v. MEF Enterprises, Inc.*, 730 S.W.2d 62, 63 (Tex.App.-Houston [14th Dist] 1987, no writ); *City of Houston v. Cascades, Inc.*, 730 S.W.2d 59, 61 (Tex.App.-Houston [14th Dist.] 1987, writ dism'd); *City of Houston v. Cascades, Inc.*, 730 S.W.2d 59, 61 (Tex.App.-Houston [14th Dist.] 1987, no writ); *Air Curtain Destructor Corp. v. City of Austin*, 675 S.W.2d 615, 617 (Tex.App.-Tyler 1984, writ ref'd n.r.e.); *City of Hutchins v. Jenkins*, 628 S.W.2d 492, 493 (Tex.App.-Texarkana 1982, no writ); *City of San Antonio v. Bee-Jay Enterprises, Inc.*, 626 S.W.2d 802, 804 (Tex.App.-San Antonio 1981, no writ); *City of Dallas v. Dallas County Housemovers Ass'n*, 555 S.W.2d 212, 214 (Tex.Civ.App.-Dallas 1977, no writ); *City of Dallas v. Rogers*, 257 S.W.2d 117, 122 (Tex.Civ.App.-Dallas 1953, mand. overr.).

[112] Tex. Civ. Prac. & Rem. Code 37.006(b). *See also Estate of Ross*, 672 S.W.2d 315, 317 (Tex.App.-Eastland 1984, writ ref'd n.r.e.) (when a litigant alleges and seeks a declaration that a state statute is unconstitutional, the Attorney General must be served with a copy of the proceedings and is entitled to be heard); *Commissioners Court of Harris County v. Peoples Nat'l Util. Co.*, 538 S.W.2d 228, 229 (Tex.Civ.App.-Houston [14th Dist.] 1976, writ ref'd n.r.e.) (failure to serve Attorney General with notice of action divests trial court of jurisdiction over the suit).

[113] *See Peoples Nat'l Util. Co.*, 538 S.W.2d at 229; *Travis Heights Improvement Ass'n v. Sewell*, 662 S.W.2d 406, 413 (Tex.App.-Austin 1986, no writ).

[114] *City Council v. Taxpayers for Vincent*, 466 U.S. 789, 797-8 (1984).

[115] *Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 494 n.5 (1982).

[116] *Bingham's Trust v. Commissioner of Internal Revenue*, 325 U.S. 365, 371 (1945).

[117] *United States v. Salerno*, 481 U.S. 739, 745 (1987).

[118] *Eide v. Sarasota County*, 908 F.2d 716, 723 (11th Cir. 1990) (*citing Weissman v. Fruchtman*, 700 F.Supp. 746, 753 (S.D.N.Y. 1988).

[119] *Id.* at 724 n.14 (emphasis in original).

[120] *See, e.g., Reno v. Flores*, 507 U.S. 292, 302-05 (1993); *Collins v. Harker Heights*, 503 U.S. 115, 125 (1992); *Aladdin's Castle, Inc. v. City of Mesquite*, 630 F.2d 1029, 1039 (5th Cir. 1980), *rev'd in part on other grounds*, 455 U.S. 283 (1982).

[121] *Nectow v. City of Cambridge*, 277 U.S. 183, 187-88 (1928). *See also, Pennell v. City of San Jose*, 485 U.S. 1, 11 (1988); *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 938 (Tex. 1998), *cert. denied*, ___ U.S. ___, 119 S.Ct. 2018 (1999).

[122] *FM Properties Operating Co. v. City of Austin*, 93 F.3d 167, 174 (5th Cir. 1996); *Mayhew*, 964 S.W.2d at 938.

[123] *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 487-88 (1955).

[124] *See Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981); *FM Properties*, 93 F.3d at 175; *Mayhew*, 964 S.W.2d at 938.

[125] *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1030 (1992); *Siegert v. Gilley*, 500 U.S. 226, 232 (1991); *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1001-04 (1984).

[126] *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).

[127] *Id. See also, Samuel v. Holmes*, 138 F.3d 173, 176 (5th Cir. 1998).

[128] *National R.R. Passenger Corp. v. Atchison, Topeka and Santa Fe Ry. Co.*, 470 U.S. 451, 476-77 (1985).

[129] *Martin v. Memorial Hosp. at Gulfport*, 130 F.3d 1143, 1149 (5th Cir. 1997).

[130] *Cleveland Bd. of Education v. Loudermill*, 470 U.S. 532, 542 (1985); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982); *Mayhew*, 964 S.W.2d at 939.

[131] *Development in the Law - Zoning*, 91 Harv. L. Rev. 1427, 1508 (1978) (emphasis added). *See also, Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441 (1915); *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 167 (1951) ("[W]hen decisions of administrative officials in execution of legislation turn exclusively on

considerations similar to those on which the legislative body could itself have acted summarily, notice and hearing may not be commanded by the Constitution").

[132] *See Jackson Court Condominiums, Inc. v. City of New Orleans*, 874 F.2d 1070, 1074-76 (5th Cir. 1989); *Couf v. DeBlaker*, 652 F.2d 585, 590 (5th Cir. 1981), *cert. denied*, 455 U.S. 921 (1982).

[133] *Plyler v. Doe*, 457 U.S. 202, 216 (1982).

[134] *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981); *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 174-75 (1980); *Vance v. Bradley*, 440 U.S. 93, 97 (1979); *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

[135] *United States Railroad Retirement Bd.*, 449 U.S. at 174; *Dukes*, 427 U.S. at 303

[136] *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985).

[137] *See Cleburne Living Center*, 473 U.S. at 441; *Mayhew*, 964 S.W.2d at 939.

[138] *Pennell v. City of San Jose*, 485 U.S. 1, 14 (1988) (*quoting Vance*, 440 U.S. at 97).

[139] *Reid v. Rolling Fork Pub. Util. Dist.*, 979 F.2d 1084, 1089 (5th Cir. 1992).

[140] *Executive 100, Inc. v. Martin County*, 922 F.2d 1536, 1541 (11th Cir.), *cert. denied*, 502 U.S. 810 (1991); *Mayhew*, 964 S.W.2d at 939.

[141] *Federal Communications Comm'n v. Beach Communications, Inc.*, 508 U.S. 307, 313-14 (1993) (citations omitted).

[142] *Beach Communications*, 508 U.S. at 314-15; *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973).

[143] *Id.* at 315.

[144] *Id.*

[145] *Pro-Eco*, 57 F.3d at 515. *See also, New York City Friends of Ferretts v. City of New York*, 876 F. Supp. 529, 533 (S.D. N.Y. 1995) ("A law will not fail to pass constitutional muster under equal protection merely because it contains classifications which are underinclusive – that is, which 'do not include all who are similarly situated with respect to a rule, and thereby burden less than would be logical to achieve the intended government end.'") (*quoting* L. Tribe, *American Constitutional Law* § 6-14 at 1447 (1988)).

[146] Tex. Gov't Code, Chapter 2007.

[147] *Agins v. City of Tiburon*, 447 U.S. 255, 260 (1980); *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 125 (1978).

[148] *Agins*, 447 U.S. at 260.

[149] *Goldblatt v. Hempstead*, 369 U.S. 590, 592 (1962)

[150] *See Hadacheck v. Sebastian*, 239 U.S. 394, 405 (1915) (restriction that devalued property by approximately 90%, from $800,000 to $60,000, upheld); *Village of Euclid v. Amber Realty Co.*, 272 U.S. 365, 384 (1926) (zoning regulation sustained even though the restriction reduced the value of the property by 75%); *Pace Resources, Inc. v. Shrewsbury Township*, 808 F.2d 1023, 1031 (3d Cir. 1987) (reduction in value from $495,600 to $52,000 held not a taking); *Pompa Constr. Corp. v. Saratoga Springs*, 706 F.2d 418, 420 n.2 (2d Cir. 1983) (use restriction which devalued property by approximately 77% was not a taking). *Penn Central*, 438 U.S. at 131.

[151] *Id.*

[152] *City of Eastlake v. Forest City Enterprises, Inc.*, 426 U.S. 668, 674 n.8 (1976) (citations omitted).

[153] *See also, Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 638 F. Supp. 126, 134 (D. Nev. 1986) ("A zoning regulation is not made invalid merely because of loss of value to the property affected, even if that loss is substantial").

[154] *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992); *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304, 320 (1987); *Jackson Court Condominiums, Inc. v. City of New Orleans*, 874 F.2d 1070, 1080-82 (5th Cir. 1989); *Midnight Sessions Ltd. v. City of Philadelphia*, 945 F.2d 667, 677 (3d Cir. 1991); *Pace Resources*, 808 F.2d at 1031.

[155] *See Agins*, 447 U.S. at 262-63.

[156] *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985).
[157] *supra*

[158]In *Mayhew*, the Court assumed, without deciding, that the state and federal guarantees in respect to land use constitutional claims were coextensive, and the Court analyzed all of the *Mayhew* plaintiffs' claims under federal standards. In that case, however, the plaintiffs asserted both state and federal claims, and all parties to that litigation agreed that the federal analysis was appropriate to resolve the state constitutional claims. *Id.* at 932.

[159] *Id.*

[160] *Id.* at 934.

[161] *Id.* at 935.

[162] *Id.*

[163] *Id.*

[164] *Id.*

[165] *Id.* at 936.

[166] *Thompson v. Gallagher*, 489 F.2d 443, 447 (5th Cir. 1973). *See also Horizon Concepts, Inc. v. City of Balch Springs*, 789 F.2d 1165, 1167 (5th Cir. 1986).

[167] *Village of Euclid v. Amber Realty Co.*, 272 U.S. 365, 395 (1926); Village of Belle Terre v. Boraas, 416 U.S. 1, 7-8 (1974); *Shelton v. City of College Station*, 780 F.2d 475, 479-80 (5th Cir.) (*en banc*), *cert. denied*, 477 U.S. 905 (1986).

[168] *See Shelton*, 780 F.2d at 480.

[169] *Id.* at 480.

[170] *Id.* at 481-82 (citations omitted).
[171] *Id.* 780 F.2d at 483.

[172] *Freeman v. City of Dallas,* 186 F.3d 601 (5th Cir. 1999), *rehearing en banc granted*, 200 F.3d 884 (5th Cir. 2000), *on rehearing,* 242 F.3d 642 (5th Cir. 2001), *petition for certiorari filed* 70 USLW 3036 (May 23, 2001).

[173] *Freeman*, 242 F.2d at 653.

[174]Four judges dissented. Three found only a warrant requirement, while the fourth (who wrote the dissent) thought that the process provided by the City was insufficient in and of itself.

[175] *See generally Kaczmarek v. State*, 986 S.W.2d 287 (Tex. Civ. App.-- Waco 1999).

[176] *Pollard v. State*, 687 S.W.2d 373 (Tex. App.—Dallas 1985, review ref'd).

[177] *Stansberry v. Holmes*, 613 F.2d 1285 (5th Cir.), *reh'g denied* 616 F.2d 568, *cert denied* 449 U.S. 886 (1980)

[178] *Id.*

[179] *SDJ, Inc. v. Cityof Houston*, 636 F.Supp. 1359 (S.D. Tex. 1986), *aff'd*, 837 F.2d 1268, *reh'g denied* 841 F.2d 107, *cert. denied sub nom M.E.F. Enters, Inc. v. City of Houston*, 489 U.S. 1052 (1989).

[180] *Howard v. State*, 617 S.W.2d 191 (Tex. Crim. App. 1979).

[181] *Lear v. State*, 753 S.W.2d 737 (Tex. App.—Austin 1988 no writ).

[182] Tex. Code Crim. Pro. Art 45.023.

[183] Tex. Code Crim. Pro., art. 45.022.

[184] Tex. Code Crim. Proc. art. 18.05. *See State v. Haley,* 811 S.W.2d 597 (Tex. Cr. App., 1991); *Haley v. State*, 811 S.W.2d 600 (Tex. Cr. App., 1991).

[185] Tex. Code Crim. Proc. § 18.05(a).

[186] Tex. Code Crim. Proc. § 18.05(b).

[187] Tex. Code Crim. Proc. § 18.05(c).

[188] Tex. Code Crim. Proc. 18.05(d).

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DRIVING SAFETY & DEFERRED DISPOSITION PROCEDURES

Presented by

Ryan Kellus Turner
General Counsel
TMCEC
Austin

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

1. Understand the natures of Deferred Disposition and DSC and their differences.
2. Identify which offenses may be dismissed upon completion of a driving safety course.
3. Identify when a defendant becomes eligible for defensive driving.
4. Recognize the differences between mandatory and permissive deferral.
5. List the legal requirements for approving a case for defensive driving.
6. Enter the proper orders in a defensive driving case.

DEFERRED DISPOSITION AND DRIVING SAFETY COURSES

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Deferred Disposition

Article 45.051
Code of Criminal Procedure

Deferred Disposition

- Discretionary
- Plea of guilty or nolo contendere or a finding of guilty
- Payment of court costs
- Court defers proceedings for 1 to 180 days

Deferred Disposition

- All fine only Offenses Except
  - Offenses committed in a construction maintenance work zone (472.022 T.C.)
  - DUI and consumption w/2 convictions
  - Holder of CDL for Traffic Offenses
    - » Sect 720.002(f)(2)
    - » Subtitle C (Rules of the Road)
    - » Chapter 521 (DL)

Deferred Disposition

- Conditions
  - Post bond in amount of fine to secure payment of fine
  - Pay restitution not to exceed fine
  - Professional counseling
  - Reasonable Conditions
  - Special Expense not to Exceed Fine
    - » on completion

Deferred Disposition

- Diagnostic Testing for Alcohol or Drugs
- Psychosocial Assessment
- Participate in alcohol and drug abuse treatment or education program
- Pay costs directly or through court costs of testing, assessment, treatment or education program
- Driving Safety Course

Deferred Disposition

- All alcohol offenses, including PI- under age 21
  - Alcohol Awareness Course required
  - Community service required (except DUI)
    - » First offense - 8 to 12 hours
    - » Second offense - 20 to 40 hours

Deferred Disposition

- Completion of terms
  - Dismisses charge
  - Court may impose special expense not to exceed amount of fine
- Failure to complete terms
  - Impose judgment
  - Assess fine or reduce fine
  - Defendant pays fine or may appeal

Deferred Disposition

- Report to DPS
  - May not report traffic offenses deferred unless defendant fails to complete and there is a conviction (Sec. 543.204, T.C.)
  - Required to report deferrals of all Alcoholic Beverage Code offenses (Sec. 106.117, A.B.C.)

DSC
Art. 45.0511, C.C.P.

DSC - Subsection (b)

- Qualified Offense
- If Defendant Elects DSC
- And does so Timely
- And Defendant meets the Qualifications

DSC: Offenses Eligible

- DSC applies to:
  - Jurisdiction of JP or Municipal Court
  - Involves the Operation of Motor Vehicle
    - » Subtitle C Rules of the Road
    - » Disobeying Warning Signs
    - » Juvenile Offenders on Same Violations
- DSC Does Not Apply to Offense Committed by CDL holder 45.0511 (s)

DSC - Qualified Offense

- Does not apply to
  - Speeding 25 mph over limit (b)(5)
  - Passing a school bus
  - Hit and Run Offenses (Occupied Vehicles)
  - Serious traffic offenses (CMV)
  - Work Zone While Workers are Present
    - » Subtitle C Rules of Road
    - » Not including Seatbelt and Inspection Offenses

DSC - Election (b)(3)(A)&(B)

- Election
  - In Person
  - By Attorney
  - By Certified Mail

DSC - Timely

- Before the Answer Date
- Mailbox Rule Art. 45.013
  - If mailed on or before answer date
  - Must be received within 10 days of answer date
  - Keep envelope
    - » Legible postmark evidence(US Mail)

DSC - Qualifications

- Evidence of Financial Responsibility
- Texas DL

DSC - Discretionary

- 45.0511 (d)
  - Defendant had DSC in preceding 12 months
  - Request not timely, but before Final Disposition
- Court may require DSC during deferral period under Art. 45.051 (Deferred Disposition)

DSC-Fees

- Mandatory or (b)
  - no more than $10, plus Court Cost
- Discretionary (d)
  - Special expense up to fine amount, plus Court Cost
- No refunds if course not taken

Safety Seats and Seatbelts

- Violations of 545.412 & 545.13(b) TC
- Must take DSC w/ 4 hours of Instruction Encouraging Use of Child Seats and Seatbelts
- TEA must approve this Special DSC
- Rule is found in 545.413 (i) TC

DSC-Notification

- Ticket required to have notice Art. 45.0511 (q)
  - Statement of right
  - May be able to have charged dismissed
- Court required to notify Art. 45.0511(r)

DSC - Subsection (c)

- Court enters judgment on plea
- Court costs collected
- Court defers imposition of judgment for 90 days (180 if offense before 9/1/03)
- During deferral period - court requires
  - DSC Court
  - Driving Record
  - Affidavit

DSC – Compliance

- On proof of Completion
  - Court removes judgment
  - Reports to DPS date of completion
  - Court may only dismiss one charge for each completion

DSC - Show Cause Hearing

- Failure to complete
  - Court notifies in writing of show cause hearing
    - » of failure
    - » of time of hearing
    - » of place of hearing
  - Court mails notice to address on file with court

DSC - Show Cause Hearing

- Appears at show cause
  - Court may allow extension of time to present certificate, or
  - Court may impose judgment
  - Defendant may pay the fine or appeal

DSC - Show Cause Hearing

- Failure to appear at show cause hearing
  - Impose judgment on underlying charge
  - Issues capias pro fine

DSC AND DEFERRED

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PART I
DRIVING SAFETY COURSES (DSC) and MOTORCYCLE OPERATOR COURSES (MOC)

A. Application

1. Offenses to which DSC/MOC Applies

Article 45.0511, C.C.P., is now entitled "Driving Safety Course (DSC) or Motorcycle Operator Course (MOC) Dismissal Procedures." DSC and MOC only applies to an offense that is in the jurisdiction of the justice or municipal court and involves the operation of a motor vehicle that is defined by Section 472.022, T.C.; Subtitle C, Title 7, T.C.; and Section 729.001(a)(3), T.C.

2. Exceptions

Exceptions to the application of Article 45.0511 include the following:

- persons with a commercial driver's license are excluded from taking a driving safety course, including when the person is driving his or her own personal vehicle;
- an offense committed in a construction or maintenance zone when workers are present;
- persons who are alleged to have been speeding 25 mph or more over the speed limit;
- persons charged with passing a school bus loading or unloading children;
- persons charged with leaving the scene of an accident after causing damage to a vehicle; and
- persons charged with leaving the scene of an accident that fail to give information and render aid.

B. Course Requirements

1. DSC

If the offense was committed in a passenger car or a pickup truck, the judge must require the defendant to complete a driving safety course approved by the Texas Education Agency. Court costs statutes require the defendant to pay all applicable court costs when the case is deferred; the court may also require a $10 administrative fee if the request is made on or before the answer date on the citation.

2. MOC

If the offense was committed on a motorcycle, the judge must require a motorcycle operator course under the motorcycle operator training and safety program approved by the Texas Department of Public Safety.

3. Driving Safety Course—Special Safety Belt Course

If the offense charged is under Sections 545.412 and 545.413, T.C., regarding securing children in child safety seat systems or safety belts or securing the driver and front seat passenger who is at least age 15 with a seat belt, defendants have a right to request a driving safety course. The court, after determining if the defendant is eligible, must require a driving safety course that

contains four hours of instruction on the effectiveness and safety of using a child safety seat system and seat belts. (Sections 545.412(g) and 545.413(i), T.C.) If the defendant completes the course, the court must dismiss the case and report the completion date of the driving safety course for inclusion in the defendant's driving record.

C. Eligibility and Requirements

To be eligible for a DSC or a MOC, the defendant:

- may not have completed an approved driving safety course or motorcycle operator training course, as appropriate, within the 12 months preceding the date of the offense;
- must enter a plea of guilty or *nolo contendere* on or before the answer date on the citation and present the court in person, by counsel, or by certified mail (postmarked on or before due date) a request to take the course;
- must present the court with a valid Texas driver's license or permit; and
- must provide the court evidence of financial responsibility.

D. Course Requirements

After the defendant enters a plea and makes the request for the course, the court must enter judgment on the plea at the time the plea is made, defer imposition of the judgment, and allow the defendant 90 days to successfully complete the approved course and present to the court on or before the 90th day:

- a certificate of completion of the DSC or MOC;
- the defendant's driving record as maintained by the Department of Public Safety showing that the defendant had not completed an approved driving safety course or motorcycle operator training course, as applicable, within the 12 months preceding the date of the offense; and
- an affidavit stating that the defendant was not taking a driving safety course or motorcycle operator training course, as applicable.

If a defendant fails to present evidence of all three requirements by the end of the 90 days deferral period, the court may not dismiss the charge.

E. Judge's Discretion before Final Disposition

If a defendant has completed an approved driving safety course or motorcycle operator training course within the 12 months preceding the date of the current offense, the court has discretion to grant a request to take DSC or MOC if the request is made before final disposition of the case.

F. Costs

1. Mandatory

Court costs statutes require the defendant to pay all applicable court costs when the case is deferred. These costs must be paid up front when the court grants the request for a driving safety course.

2. Judge's Discretion

The court may require a $10 administrative fee if the request if made on or before the answer date on the citation. If the judge allows a defendant to take a driving safety course under the

permissive provisions under Article 45.0511(d), C.C.P., the judge may require a fee in an amount not to exceed the maximum amount of the fine for the offense. If the person does not complete the course or present the other required evidence and the fine is imposed, the person is not entitled to a refund of the fee under the mandatory or permissive provisions.

G. Required Evidence at End of 90 Days

Before a court may dismiss a charge when a defendant has requested DSC or MOC, the defendant must present the following to the court on or before the 90th day after the request:

- a uniform certificate of completion of the driving safety course or a verification of completion of the motorcycle operator course;
- his or her driving record as maintained by the Texas Department of Public Safety showing that the defendant had not completed an approved driving safety course or motorcycle operator training course, as applicable, within the 12 months preceding the date of the current offense; and
- an affidavit stating that the defendant was not taking a driving safety course or motorcycle operator course, as applicable, for another case on the date the request to take the course was made and had not completed such a course that is not shown on the defendant's driving record within the 12 months preceding the date of the offense.

H. Satisfactory Completion

When the defendant presents all the evidence required, the court shall remove the judgment and dismiss the charge.

I. Failure to Complete Course/Submit Evidence of All Requirements

If a person fails to present the court with the required evidence of course completion, copy of driving record as maintained by the Texas Department of Public Safety; and the affidavit, the court shall set a show cause hearing and notify the defendant by mail of the hearing. If the defendant fails to appear for the show cause hearing, the court shall impose the fine. If the person appears and can show good cause for the failure to furnish evidence to the court, the court may allow an extension of time during which the defendant may present the evidence of course completion and other required evidence.

J. Appeal

If the defendant fails to complete the course or fails to submit all the required evidence and the judge subsequently adjudicates the defendant's guilt, the defendant may appeal the conviction if the municipal court is a non-record municipal court. If the defendant does not appeal, the defendant must pay the fine.

K. Reports to the Texas Department of Public Safety

If the defendant completes the DSC or MOC and presents satisfactory evidence of the other requirements and dismisses the charge, the court reports to the Department of Public Safety the fact that the defendant successfully completed a driving safety course or a motorcycle operator training course under Article 45.0511, C.C.P., and the date of completion.

If the defendant fails to complete the course and the offense charged is a traffic offense, the court reports the conviction to the Department of Public Safety.

PART II
COLLECTIONS

A. *Nonresident Violator Compact*

Over 40 states in the United States have entered into the *Nonresident Violator Compact* of 1977. In addition to Texas, the contiguous states of Arkansas, Louisiana, New Mexico, and Oklahoma are members. The member states recognized that a motorist from out-of-state, who was charged with a traffic offense, was often required to post a bond, detained, or taken directly to court for "trial." They felt these practices were a hardship for motorists and took an undue amount of law enforcement time. (Section 703.002, Article I(a), T.C.) To remedy these problems, the states developed the *Nonresident Violator Compact* not only to seek compliance with the laws of each state, but also to allow motorists to proceed on their way, thus, better utilizing law enforcement time. (Section 703.002, Article I(b), T.C.)

Basically, the *Compact* allows an out-of-state motorist accused of a traffic violation to be given a citation instead of being arrested. The law requires the issuing officer to issue a citation to any out-of-state operator who has a driver's license from a *Compact* state. The officer or jurisdiction may not require a bond. (Section 703.002, Article III(a), T.C.)

If a motorist fails to comply with the terms of release or the promise to appear, the court must report the failure to comply to the Texas Department of Public Safety. (Section 703.002, Article III(c), T.C.) The court must use a form approved by DPS that includes vital information about the defendant, the court, and the alleged violation. The Department of Public Safety reports the violation and failure to appear to the state that issued the defendant's license to drive. (Section 703.002, Article III(d), T.C.) It is important for the court to promptly forward a report because DPS must transmit the record within six months of the offense or else the other state does not have to suspend the driver's license. (Section 703.002, Article III(f), T.C.)

Once the motorist's home state receives the Department of Public Safety report, the state is required to notify the defendant and initiate a suspension action. (Section 703.002, Article IV(a), T.C.) If suspension is deemed appropriate under that state's laws, the defendant's driver's license will be suspended until satisfactory evidence of compliance with the traffic citation is provided. (Section 703.002, Article IV(a), T.C.)

The *Compact* appears to be working very well for those courts willing to use it. It must be remembered, however, that *Compact* state traffic violators cannot be arrested whether the court chooses to utilize the *Compact* or not. Also, the ability for the *Compact* to work for a court depends on the accuracy and speed of reporting violators from other states. Municipal court personnel are encouraged to learn the *Nonresident Violator Compact's* provisions and use them to their advantage. For more information on reporting violations under the *Nonresident Violator Compact*, see the study guide, *State and City Reports*.

B. Contracts

The Transportation Code contains two provisions that permit a city to contract for enforcement of certain offenses when a defendant fails to appear or fails to pay.

Both provisions require a notice to the defendant provided by the officer issuing the citation that tells the defendant of the possibility of the denial of the driver's license renewal or the refusal to

register the vehicle. See the study guide, *State and City Reports,* for more information on reporting under these contracts.

1. Texas Department of Transportation

One provision says that a home-rule city may contract with a county assessor-collector or the Texas Department of Transportation (TXDOT) to refuse to register a vehicle for failure to appear or failure to pay a fine involving a violation of a traffic law. Traffic law is defined to mean a statute or ordinance that is punishable by a fine not to exceed $200 that regulates the conduct or condition of a person operating a motor vehicle or the condition of a motor vehicle on a street, road, or highway. (Chapter 702, T.C.) The city must notify the TXDOT upon entry of judgment, perfection of an appeal, or dismissal of the charge. There are no provisions for the collection of a fee under this contract.

2. Texas Department of Public Safety

Another provision says that cities may contract with the Texas Department of Public Safety to deny renewal of driver's licenses for persons who fail to appear, fail to pay, or fail to satisfy a judgment in a manner ordered by the court for fine-only offenses. A city that contracts with DPS must collect a $30 administrative fee from the defendant and remit $20 of the fee to the State. (Chapter 706, T.C.)

Part III
REPORTS TO THE TEXAS DEPARTMENT OF PUBLIC SAFETY

A. Information Required to be Maintained by the Courts

Each magistrate or judge of a non-record court and each clerk of a court of record shall keep a record of each case in which a person is charged with a violation of law regulating the operation of vehicles on highways. (Section 543.201, T.C.) The record shall contain the following information:

- the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;
- the registration number of the vehicle involved;
- whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;
- the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver's learner's permit;
- the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;
- whether a search of the vehicle was conducted and whether consent for the search was obtained;
- the plea, the judgment, and whether bail was forfeited;
- the date of the conviction; and

- the amount of the fine or forfeiture.

B. Information Required to be Reported to the Texas Department of Public Safety

Courts are required to report traffic convictions and bail forfeitures on a form or by a data processing method acceptable to the Department of Public Safety. Section 543.202, T.C., requires courts to report to the Texas Department of Public Safety the following information:

- the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;
- the registration number of the vehicle involved;
- whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;
- the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver's learner's permit;
- the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;
- whether a search of the vehicle was conducted and whether consent for the search was obtained;
- the plea, the judgment, and whether bail was forfeited;
- the date of the conviction; and
- the amount of the fine or forfeiture.

C. Time to Report Convictions or Forfeiture of Bail

Courts are required to report the convictions or forfeiture of bail to the Department of Public Safety by the 30th day after the date of the conviction or forfeiture of bail. The report must contain the information noted above. (Section 543.203, T.C.)

D. Reporting Driving Safety Course Dismissals

When a defendant completes a driving safety course and presents to the court all the required evidence, the court is required to dismiss the charge. After the charge is dismissed, the court is required to report to the Texas Department of Public Safety the date of completion of the driving safety course. (Articles 54.0511(2) and (3), C.C.P.)

E. Reporting Traffic Case Dismissed under Deferred Disposition

The court is prohibited from submitting a record to the Texas Department of Public Safety of a dismissal of a traffic offense dismissed under deferred disposition. (Article 45.051, C.C.P.) The Department of Public Safety may not keep a record for which the submission is prohibited. (Section 543.204, T.C.)

F. Failure to Report

If a judicial officer fails to maintain or report the required information timely, the judicial officer may be charged with misconduct in office. This may be grounds for removal from the judicial officer's position. (Section 543.206, T.C.)

CONCLUSION

Traffic law is a mixture of various laws and regulations. In spite of their diversity, they have a common purpose. They attempt to provide safety to citizens who travel on the streets and highways. A responsibility is placed on the courts to know those laws, to educate the public on them, and to promote safer driving through punitive or remedial action. While traffic law is often confusing and sometimes difficult to administer, courts should be depended on to do their part in making Texas roadways safe.

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OVERVIEW OF PROCESSING CASES

Presented by

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

1. Describe the requirements of a complaint.
2. Define what is a docket and explain its function.
3. Define judgment and explain when it is to be signed.
4. Identify warrants of arrest, *capias*, *capias pro fine* and summons and outline proper procedures when to issue.
5. Define what constitutes an appearance in court.
6. Define the three failure to appears and list the proper procedures when these cases can be filed.
7. Identify the types of bonds and outline the proper procedures for setting, collecting and forfeiting.
8. Describe proper procedures for handling an appeal.

OVERVIEW OF PROCESSING CASES

Includes Changes of 78th Legislative Session

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OVERVIEW OF PROCESSING CASES

(Includes 78th Legislative Changes)
Prepared by Margaret Robbins, Program Director, TMCEC

JURISDICTION

A. Criminal (Art. 4.01, C.C.P.)

B. Exclusive Original Jurisdiction

1. Exclusive original jurisdiction over city ordinance violations. (Art. 4.14, C.C.P. & Sec. 29.003, G.C.)
2. Exclusive original jurisdiction over criminal cases that arise under a resolution, rule, or order of a joint board operating an airport under Section 22.074, T.C. (Sec. 29.003, G.C.)
3. Article 4.14, C.C.P., provides authority over city ordinance violations and Section. 29.003, G.C., provides authority for municipal court jurisdiction over criminal cases that arise under city ordinance violations and under resolutions, rules or orders of a joint board with the following penalties:
   a. Up to a maximum fine of $2,000 in all cases arising under the ordinances, resolutions, rules, or orders of a joint board that govern:
      - Fire safety,
      - Zoning,
      - Public health,
      - Sanitation (including dumping of refuse);
   b. Up to a maximum fine of $500 for all other city ordinance violations, or violations of a resolution of a joint board.

C. Geographical Jurisdiction

1. Territorial limits (corporate limits) of the city over fine-only offenses. (Art. 4.14, C.C.P. & Sec. 29.003(a)(1) and (b)(1), G.C.)
2. Exclusive original jurisdiction over property owned by the municipality located in the municipality's extraterritorial jurisdiction in all cases that arise under city ordinances and rules, resolutions, and orders of a joint airport board. (Sec. 29.003, G.C.)
3. Concurrent jurisdiction with justice of the peace courts over state law fine-only offenses that occur on property owned by the city in its extraterritorial jurisdiction. (Sec. 29.003, G.C.)
4. Municipal courts of records have exclusive original jurisdiction over city ordinance violations authorized by Sections 215.072, 217.042, 341.903,

and 401.002, L.G.C. that occur in a city's extraterritorial jurisdiction. (Sec. 30.00005, G.C.)

5. Where a municipality is authorized to adopt a nuisance ordinance applicable to conduct occurring outside city limits and where the municipality has adopted such an ordinance, a municipal court has implied jurisdiction over cases arising from violations of the ordinance that occur outside city limits. (A.G. Op. No. JC-0025, March 1999)

D. Concurrent Jurisdiction

1. Concurrent jurisdiction with justice of the peace courts within the territorial limits of the city or property owned by the municipality located in the municipality's extraterritorial jurisdiction in all criminal cases involving state law punishable by fine-only. (Art. 4.14, C.C.P. & Sec. 29.003, G.C.)
2. The governing body of a municipality may by ordinance provide that the municipal court of record has civil jurisdiction for the purpose of enforcing dangerous structures and junked vehicle ordinances and has concurrent jurisdiction with a court or county court at law for the purpose of enforcing health and safety or nuisance abatement ordinances. (Sec. 30.00005, G.C.)

E. Penalties

1. Fine-only is defined as an offense that is 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.) and includes:
   a. Offenses under Chapter 106, A.B.C. that do not include confinement as an authorized sanction. (Art. 4.14(b)(2), C.C.P.)
   b. Offenses under Subchapter N, Tobacco Use by Minors, of the Health and Safety Code. (Sec. 161.256, H.S.C.)
   c. Class C misdemeanors - offenses punishable by fine only not to exceed $500. (Sec. 12.23, P.C.) Any offense that is punishable by a fine-only outside the Penal Code is a Class C misdemeanor. (Sec. 12.41, P.C.)
   d. Traffic offenses under the Transportation Code that do not include confinement as an authorized sanction.
   e. Education Code fine-only offenses.
2. Theft Jurisdiction
   - Theft of property of a value less than $50 (Class C misdemeanor) (Sec. 31.03, P.C.);
   - Theft of property of a value less than $20 if the defendant obtained the property by issuing or passing a check or sight order and the

person did not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders then outstanding (Class C misdemeanor) (Sec. 31.03, P.C.);

- Theft of services of a value less than $20 (Class C misdemeanor) (Sec. 31.04, P.C.);
- Theft of service or credit by intentionally or knowingly making a false or misleading written statement to obtain property or credit for himself/herself or another is a Class C misdemeanor if the value of the property or the amount of the credit is less than $50 (Section 32.32, P.C.); and
- Theft of gasoline requires an affirmative finding in the judgment and if it is a subsequent conviction, a special affirmative finding. The court must report the theft to the Department of Public Safety who will upon a subsequent conviction automatically suspend the driver's license or deny issuance. (Article 42.019, C.C.P.)

3. Criminal Mischief is a Class C misdemeanor if the amount of pecuniary loss is less than $50. (Sec. 28.03 P.C.)
4. For additional sanctions the court may order upon conviction of a juvenile (under age 17), see the next section on Juveniles.

F. Juveniles – under the Age of 17

1. Municipal court has jurisdiction over traffic offenses, except Section 502.282 (vehicle carrying mobile amateur radio equipment); Section 502.412 (operation of vehicle at weight greater than stated in registration application); Section 550.021 (accident involving personal injury or death); Section 550.022 (duty to give information and render aid punishable as a Class B misdemeanor); and Section 550.024 (duty on striking unattended vehicle punishable as a Class B misdemeanor). (Sec. 729.001, T.C.) Juveniles (minors) under the age of 17 are punished by the fine or other sanction, other than confinement or imprisonment, authorized by statute for violation of the traffic law listed under subsection (a) that is the basis of the prosecution under this section. (Sec. 729.001(c), T.C.)
2. Other fine-only state law violations including Alcoholic Beverage Code offenses; Health and Safety Code offenses; Penal Code offenses, except public intoxication; and Education Code offenses. (Sec. 51.03(f), F.C.; Sec. 8.07, P.C.)
3. City ordinance violations. (Sec. 51.03(b), F.C.)
4. Municipal court and justice court may hold a child in contempt of the municipal court or justice court order and order the child to pay a fine not to exceed $500 and/or order the Department of Public Safety to suspend or deny issuance of a driver's license or permit until the child fully complies. (Art. 45.050, C.C.P.)

5. Municipal court may refer a child to the appropriate juvenile court for delinquent conduct for contempt of the municipal or justice court order. (Article 45.050, C.C.P.)

6. Expunctions – Municipal Court Jurisdiction

   - Alcoholic Beverage Code offenses (minors under age 21); minor may petition municipal court for expunction if had only one conviction for an Alcoholic Beverage Code offense upon reaching age 21. (Sec. 106.12, A.B.C.)
   - Tobacco offenses – (minors under age 18); may petition municipal court to expunge tobacco convictions as long as defendant has completed the tobacco awareness course. (Sec. 161.255, H.S.C.)
   - Fail to attend school; court must admonish child and parent of right to expunge one conviction upon attaining age 18. Court must give the child and parent a copy of Article 45.055, C.C.P., which contains the expunction provisions. (Art. 45.054(e), C.C.P.)
   - Penal Code and penal ordinance convictions – court must admonish child and parent of right to expunction and give them a copy of Article 45.0216, C.C.P. person can petition the court at age17 or after to expunge one conviction.

7. Waiver of jurisdiction (Sec. 51.08, F.C.)

   a. Jurisdiction over pending complaint *shall* be waived by municipal court and child shall be referred to juvenile court in the following instance:

      - Two or more previous convictions of fine-only misdemeanors, except traffic;
      - Two or more violations of a penal ordinance of a political subdivision other than a traffic offense; or
      - One or more of each of the types of misdemeanors stated above.

   b. Jurisdiction over pending complaint *may* be waived by municipal court and the child referred to juvenile court in the following instances:

      - No convictions of fine-only misdemeanors, other than traffic including traffic offenses governed by city ordinances;
      - Has previously been convicted of fewer than two misdemeanors punishable by fine-only other than a traffic offense.

   c. Exception to mandatory waiver – If a court implements a juvenile case manager program under Article 45.056 (written consent of the city council must be obtained first), then the court may, but is not required to, waive its original jurisdiction. (Section 51.08(d), F.C.)

G. Retaining Jurisdiction

The court in which complaint is first filed retains jurisdiction. (Art. 4.16, C.C.P.)

H. Bond Forfeitures

Municipal court has jurisdiction to conduct bond forfeiture hearings. (Art. 4.14, C.C.P.)

I. Statute of Limitations

For misdemeanors - a complaint must be filed within two years of commission of an offense to be prosecuted. (Art. 12.02, C.C.P.)

J. Civil Jurisdiction – Municipal Court of Record

The governing body of a municipality may be ordinance provide that the municipal court of record have civil jurisdiction for the purpose of enforcing municipal ordinances enacted under Subchapter A, Chapter 214, Local Government Code, or Subchapter E. Chapter 683, T.C or concurrent jurisdiction with a district court or a county court at law under Subchapter B, Chapter 54, Local Government Code, within the municipality's territorial limits and property owned by the municipality located in the city's extraterritorial jurisdiction for the purpose of enforcing health and safety and nuisance abatement ordinances. (Section 30.0005, G.C.)

FILING WITH CLERK BY MAIL (MAILBOX RULE)

1. Notwithstanding any other law, for the purposes of Chapter 45, a document is considered timely filed with the clerk of a court if:
   - The document is deposited with the United States Postal Service in a first class postage prepaid envelope properly addressed to the clerk on or before the date the document is required to be filed with the clerk; and
   - The clerk receives the document not later than the 10th day after the date the document is required to be filed with the clerk.
2. A legible postmark affixed by the United States Postal Service is prima facie evidence of the date the document is deposited with the United States Postal Service. In this article, "day" does not include Saturday, Sunday, or a legal holiday. (Art. 45.013, C.C.P.)

DIGITAL SIGNATURE (Art. 2.26, C.C.P.)

A. Definition

Digital signature means an electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature.

B. Electronically Transmitted Documents

An electronically transmitted document issued or received by a court in a criminal matter is considered signed if a digital signature is transmitted with the document.

C. Digital Signature Subject to Criminal Laws

The use of a digital signature under this section is subject to criminal laws pertaining to fraud and computer crimes, including Chapters 32 and 33, P.C.

D. Documents Issued by Court or Law Enforcement

A document issued by a justice or municipal court or a notice or citation issued by a law enforcement officer may be created by electronic means, including optical imaging, optical disk, digital imaging, or other electronic reproduction technique that does not permit changes, additions, or deletions to the originally created document. A statutory requirement that a document contain the signature of any person, including a judge, clerk of the court, or defendant, is satisfied if the document contains that signature as captured on the electronic device. (Art. 45.012, C.C.P.)

E. Promise to Appear (Sec. 543.005, T.C.)

The signature securing the release of a person arrested may be obtained on a duplicate form or on an electronic device capable of creating a copy of the signed notice. The arrest officer shall retain the paper or electronic original of the notice and deliver the copy of the notice to the person arrested.

F. Electronically Recorded Judgments (Art. 45.012, C.C.P.)

An electronically recorded judgment has the same force and effect as a written or signed judgment. A statutory requirement that a document contain the signature of any person, including a judge, clerk of the court, or defendant, is satisfied if the document contains that signature as captured on the electronic device. (Art. 45.012(h), C.C.P.)

COMPLAINTS

A. Charging Instrument (Arts. 45.018 and 45.019, C.C.P.)

1. Initiates proceedings.
2. Accuses defendant with the commission of an offense.
3. Defendant entitled to notice of a complaint not later than the day before the date of any proceeding in the prosecution. Defendant may waive the right to notice. (Section 45.018, C.C.P.)
4. Article 45.019, provides the requisites of a complaint:
    - It must be in writing;
    - It must commence "In the name and by the authority of the State of Texas";
    - It must state the name of the accused, if known, or if unknown, must include a reasonably definite description of the accused;
    - It must show that the accused has committed an offense against the law of this State, or state that the affiant has good reason to believe and does believe that the accused has committed an offense against the law of this State;
    - It must state the date the offense was committed as definitely as the affiant is able to provide;
    - It must bear the signature or mark of the affiant; and
    - It must conclude with the words "Against the peace and dignity of the State: and, if the offense charged is an offense only under a municipal ordinance, it may also conclude with the words "Contrary to the said ordinance."
5. If a defendant does not object to a defect, error, or irregularity of form or substance in the charging instrument before the date on which the trial on the merits commences, the defendant waives and forfeits the right to object to the defect, error, or irregularity. Nothing in this article prohibits a trial court from requiring that an objection to a charging instrument be made at an earlier time. (Art. 45.019, C.C.P.)
6. Complaint must allege that offense committed in the territorial limits of the municipality in which the complaint is made. (Art. 45.019, C.C.P.)
7. The complaint may be sworn to before the municipal judge, clerk, deputy clerk, city secretary, city attorney, or deputy city attorney. (Art. 45.019, C.C.P.)
8. Seal – Between September 1, 1999 and August 30, 2000, no seal was required in non-record courts. For offenses committed on or after September 1, 2000, non-record courts were required to use a seal on all papers issued out of the court except for subpoenas and to authenticate

the acts of the clerk and judge. (Art. 45.012(g), C.C.P.) When the requirement became effective on September 1, 2000, there was no provision regarding the form or information on the seal. You may want to look to municipal courts of record whose seal under Section 30.000125, G.C. must include the phrase "Municipal Court of/in _____, Texas."

B. When Judge May Issue a Warrant

When a sworn complaint or affidavit based on probable cause has been filed, the judge may issue a warrant. (Arts. 45.014 and 15.05, C.C.P.)

C. Citation for Fine-Only Misdemeanor Offenses

1. Citation may serve as complaint for defendants to plead not guilty, guilty or nolo contendere. (Art. 27.14(d), C.C.P.)(A.G. Op. Nos. JM-869, JM-876) (Note: Since Art. 14.06(b), C.C.P., provides that a citation may be issued for any Class C misdemeanor offense except public intoxication, a sworn complaint must be filed to initiate the proceedings for public intoxication.)
2. If defendant pleads not guilty, the court is required to file a sworn complaint that complies with the requirements of Chapter 45, C.C.P., unless the defendant waives the filing of the sworn complaint and elects that the prosecution proceed on the citation, signs an agreement with the prosecutor, and files it with the court. (Art. 27.14(d), C.C.P.)
3. If a defendant fails to appear and the court is issuing an arrest warrant for the defendant, a sworn complaint or an affidavit based on probable cause is required. (Art. 45.014, C.C.P.)

D. Culpable Mental States

1. A person does not commit an offense unless he or she intentionally, knowingly, recklessly or with criminal negligence engages in conduct as the definition of the offense requires. (Sec. 6.02, P.C.)
2. A culpable mental state is a required element of a criminal offense unless the definition of the offense plainly dispenses with any mental element. (Sec. 6.02(b), P.C.)
3. Exception – Most offenses charged under the Transportation Code do not require pleading a culpable mental state in the complaint. (*Veevers v. State*, 354 S.W.2d 161 [1962])

DOCKETING

A. Judge Required to Keep and Enter Proceedings (Art. 45.017, C.C.P.)

(A docket is a formal record of each case with brief entries of the proceedings – *Black's Law Dictionary, Fifth Edition*)

B. Requirements (Art. 45.1017, C.C.P.)

- The style and file number of each criminal action;
- The nature of the offense charged;
- The plea offered by the defendant and the date the plea was entered;
- The date the warrant, if any, was issued and the return made thereon;
- The date examination or trial was held and if a trial was held, whether it was by a jury or by the justice or judge;
- The verdict of the jury, if any, and the date of the verdict;
- The judgment and sentence of the court, and the date each was given; (An electronically recorded judgment has the same force and effect as a written or signed judgment. (Art. 45.012, C.C.P.)
- The motion for new trial, if any, and the decision thereon; and
- Whether an appeal was taken and the date of that action.

C. Format of the Docket

The information in the docket may be processed and stored by the use of electronic data processing equipment, at the discretion of the judge. (Art. 45.017, C.C.P.; Secs. 201.001-205.009, L.G.C.) (A.G. Op. DM-139)

D. Electronically Created Records (Art. 45.012, C.C.P.)

The court may use electronic means to maintain a docket.

WARRANTS AND FAILURE TO APPEAR

A. Probable Cause (U.S. Const., 4th Amend.)

No warrant shall issue, but upon probable cause. The test in determining if a complaint shows probable cause is whether it provides a neutral and detached magistrate with sufficient information to support an independent judgment that probable cause exists for the issuance of a warrant. (*Rumsey v. State*, 675 S.W.2d 517, 519 [Tex.Crim.App. 1984])

B. Service of Process

1. All process issuing out of a municipal court may be served and shall be served when directed by the court, by a peace officer or marshal of the municipality within which it is situated, under the same rules as are provided by law for the service by sheriffs and constables of process issuing out of the justice court, so far as applicable. (Art. 45.202, C.C.P.)
2. The peace officer or marshal may serve all process issuing out of municipal court anywhere in the county in which the city, town, or village is situated. (Art. 45.202, C.C.P.)
3. If the city, town, or village is situated in more than one county, the peace officer or marshal may serve the process throughout those counties. (Art. 45.202, C.C.P.)

C. Commitment

1. Whenever a peace officer is authorized to retain a defendant in custody, the peace officer may place the defendant in jail in accordance with the Code of Criminal Procedure or other law. (Art. 45.015, C.C.P.)
2. When a judgment and sentence have been entered against a defendant and the defendant defaults in the discharge of the judgment, the judge may order the defendant confined in jail until discharged by law if the judge determines that:
    - the defendant intentionally failed to make a good faith effort to discharge the judgment; or
    - the defendant is not indigent. A certified copy of the judgment, sentence, and order is sufficient to authorize such confinement. (Art. 45.046, C.C.P.)
3. A municipal court may waive payment of a fine or costs imposed on a defendant who defaults in payment if the court determines that the defendant is indigent; and each alternative method of discharging the fine or costs under Article 43.09 would impose an undue hardship on the defendant. (Art. 43.091, C.C.P.)

D. Juveniles (Age Ten and under the Age of 17)

1. In lieu of taking a child into custody, a peace officer may issue a field release citation as provided by Art. 14.06, C.C.P. (Art. 14.06(b), C.C.P.)
2. Juveniles may be taken into custody pursuant to the laws of arrest. (Sec. 52.01, F.C.)
3. Custody of juveniles (Article 45.058, C.C.P.)
    a. For the purposes of taking a child into custody, a child is at least 10 years of age and younger than 17 years of age and who is charged with or convicted of an offense that a justice or municipal court has

jurisdiction of under Article 4.11 or 4.14, C.C.P., other than public intoxication.

b. Juveniles taken into custody for fine-only offenses other than public intoxication may be:

- released to a parent, guardian, custodian or other responsible adult;
- taken before a municipal or justice court; or
- taken to a place of nonsecure custody. Nonsecure custody is defined as an unlocked, multipurpose area. A lobby, office, or interrogation room is suitable if the area is not designated, set aside, or used as a secure detention area and is not part of a secure detention area. A place of nonsecure custody may be a juvenile processing office designated under Sec. 52.025, F.C., if the area is not locked when it is used as a place of nonsecure custody.

c. Procedures required to be followed in a place of nonsecure custody (Article 45.058, C.C.P.):

- a child may not be secured physically to a cuffing rail, chair, desk, or other stationary object;
- a child may be held in the nonsecure facility only long enough to accomplish the purpose of identification; investigation; processing; release to parents; or the arranging of transportation to the appropriate juvenile court, juvenile detention facility, municipal court, or justice court;
- residential use of the area is prohibited;
- the child shall be under continuous visual supervision by a law enforcement officer or facility staff person during the time the child is in nonsecure custody; and
- A child may not under any circumstances be detained in a place of nonsecure custody for more than six hours.

d. A child taken into custody for a misdemeanor offense within the jurisdiction of justice or municipal court may only be taken to a juvenile detention facility if the case is transferred or referred to the juvenile court. (Art. 45.058(f), C.C.P.)

5. Children Taken into Custody for Violation of Juvenile Curfew Ordinance or Order (Art. 45.059, C.C.P.)

a. A peace officer taking into custody a person under 17 years of age for violation of a juvenile curfew ordinance of a municipality or order of the commissioners' court of a county shall, without unnecessary delay:

- release the person to the person's parent, guardian, or custodian;

- take the person before a municipal or justice court to answer the charge; or
- take the person to a place designated as a juvenile curfew processing office by the head of the law enforcement agency having custody of the person.

b. Juvenile curfew processing office must observe the following procedures:

- the office must be an unlocked, multipurpose area that is not designated, set aside, or used as a secure detention area or part of a secure detention area;
- the person may not be secured physically to a cuffing rail, chair, desk, or stationary object;
- the person may not be held longer than necessary to accomplish the purposes of identification, investigation, processing, release to parents, guardians, or custodians, and arrangement of transportation to school or court;
- a juvenile curfew processing office may not be designated or intended for residential purposes;
- the person must be under continuous visual supervision by a peace officer or other person during the time the person is in the juvenile curfew processing office; and
- a person may not be held in a juvenile curfew processing office for more than six hours.

c. A place designated as a juvenile curfew processing office is not subject to the approval of the juvenile board having jurisdiction where the governmental entity is located.

E. Unadjudicated Children Now Adults (Art. 45.060, C.C.P.)

1. **Court must have used all available procedures to compel the child's appearance before the child turned age 17.**
2. **On or after the child's 17th birthday, the court may issue notice of continuing obligation to appear by personal service or by mail to the last known address and residence of the individual. The notice must order the individual to appear at a designated time, place, and date to answer the allegations detailed in the notice.**
3. **The notice must contain the following statement in boldfaced type or capital letters: "WARNING: COURT RECORDS REVEAL THAT BEFORE YOUR 17TH BIRTHDAY, YOU WERE ACCUSED OF A CRIMINAL OFFENSE AND HAVE FAILED TO MAKE AN APPEARANCE OR ENTER A PLEA IN THIS MATTER. AS AN ADULT, YOU ARE NOTIFIED THAT YOU HAVE A CONTINUING OBLIGATION TO APPEAR IN THIS CASE. FAILURE TO APPEAR AS REQUIRED BY**

THIS NOTICE MAY BE AN ADDITIONAL CRIMINAL OFFENSE AND RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST." (HB 2319 eff. 9/1/03)

F. Adjudicated Children Who Fail to Pay (Art. 45.045, C.C.P.)

1. A capias pro fine may not be issued for an individual convicted for an offense committed before the individual's 17th birthday unless:

   - **the individual is 17 years of age or older;**
   - **the court finds that the issuance of the capias pro fine is justified after considering:**
     - **the sophistication and maturity of the individual;**
     - **the criminal record and history of the individual; and**
     - **the reasonable likelihood of bringing about the discharge of the judgment through the use of procedures and services currently available to the court; and**
   - **the court has proceeded under Article 45.050 to compel the individual to discharge the judgment. (HB 2319 eff. 9/1/03)**

G. Warrant of Arrest (Adult Defendants)

1. Warrant of arrest issued by a municipal judge.
   a. A municipal judge may issue a warrant when a sworn complaint or affidavit based on probable cause has been filed before the judge. (Art. 45.014, C.C.P.)
   b. Requisites of warrant issued by judge (Art 45.014, C.C.P.); the warrant is sufficient if:
      i. It is issued in the name of "The State of Texas";
      ii. It is directed to the proper sheriff, constable, or some other person specially named in the warrant;
      iii. It includes a command that the body of the accused be taken and brought before the authority issuing the warrant, at the time and place stated in the warrant;
      iv. It states the name of the person whose arrest is ordered, if it be known, and if not known, it describes the person as in the complaint;
      v. It states that the person is accused of some offense against the laws of the State, naming the offense; and

vi. It is signed by the justice or judge naming the office of the justice or judge in the body of the warrant or in connection with the signature of the justice or judge.

c. How warrant issued by judge – The warrant shall be delivered to the proper officer to be executed. (Art. 45.014, C.C.P.)

2. Magistrate may issue warrant. (Art. 15.03, C.C.P.)

a. Municipal judges and mayors are magistrates. (Art. 2.09, C.C.P.

b. Requisites of warrant issued by magistrate (Art. 15.02, C.C.P.):

i. It issues in the name of "The State of Texas;"

ii. It must specify the name of the person whose arrest is ordered, if it be known, if unknown, then some reasonably definite description must be given of him or her;

iii. It must state that the person is accused of some offense against the laws of the State, naming the offense; and

iv. It must be signed by the magistrate, and his or her office be named in the body of the warrant or in connection with his or her signature.

c. Warrant extends to every part of State. (Art. 15.06, C.C.P.)

d. Warrant issued by mayor as a magistrate cannot be executed in another county than the one in which it is issued, except when it is endorsed by a judge of a court of record, in which case it may be executed anywhere in the State or if it is endorsed by a magistrate in the county in which the accused is found. (Art. 15.07, C.C.P.)

e. Warrant may be telegraphed. (Art. 15.08, C.C.P.)

f. Warrant directed to a peace officer or some other person specially named. (Art. 15.01, C.C.P.)

g. How warrant issued by magistrate is executed. (Arts. 15.16, 15.17, C.C.P.)

i. The officer or person executing a warrant of arrest shall without unnecessary delay take the person or have him or her taken before a magistrate who issued the warrant or before the magistrate named in the warrant, if the magistrate is in the same county where the person is arrested. If the issuing or named magistrate is in another county, the person arrested shall without unnecessary delay be taken before some magistrate in the county in which the person was arrested. (Art. 15.16, C.C.P.)

ii. The person making the arrest shall without unnecessary delay take the person arrested or have him or her taken before some magistrate of the county where the accused was arrested or, if necessary to provide more expeditiously to the person arrested

the warnings described in Article 15.17, before a magistrate in a county bordering the county in which the arrest was made. (Art. 15.17, C.C.P.)

h. **The arrest warrant and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies. (Art. 15.26, C.C.P.) (HB 13 eff. 9/1/03)**

H. Seizure of Cruelly Treated Animals

Municipal court may issue warrants that order seizure of animals being cruelly treated. (Sec. 821.022, H.S.C.)

I. Seizure of Dangerous Dogs

Municipal court may issue a warrant ordering the animal control authority to seize a dangerous dog. (Sec. 822.002, H.S.C.)

The governing body of the municipality or county may prescribe the amount of fees that an owner shall pay related to the seizure of a dog. (Sec. 822.042, H.S.C.)

The court, after determining that a dog is a dangerous dog, may order the animal control authority to continue to impound the dangerous dog in secure and humane conditions until the court orders disposition of the dog under Section 822.042, H.S.C. and the dog is returned to the owner or destroyed. (Sec. 822.0422(e), H.S.C.)

J. Seizure Warrant for Nuisance Abatement (Section 30.00005, G.C.)

A governing body of a municipality by ordinance may provide that the municipal court of record has authority to issue a seizure warrant for the purpose of securing, removing, or demolishing offending property and removing debris from the premises.

K. Capias (Arts. 23.01, C.C.P.)

1. Capias means a written order issued by the court (judge) and directed "To any peace officer of the State of Texas", commanding him or her to arrest a person accused of an offense and bring the person before the court immediately. (Art. 23.01, C.C.P.)
2. Requisites. (Art. 23.02, C.C.P.)
   - It shall run in the name of "The State of Texas";

- That it name the person who arrest is ordered, or if unknown, describe the person;
- That it specify the offense of which the defendant is accused, and it appear thereby that he or she is accused of some offense against the penal laws of the State;
- That it name the court to which and the time when it is returnable; and
- That it be dated and attested officially by the authority issuing the same.

3. In misdemeanor cases. (Art. 23.04, C.C.P.)
4. After bond forfeiture, capias required to be issued. (Art. 23.05, C.C.P.)
5. Capias does not lose its force if not executed and returned at the time fixed in the writ. (Art. 23.07, C.C.P.)
6. Return of capias. (Art. 23.18, C.C.P.)

L. Summons

1. Summons issued by a magistrate.
   a. Form of summons. (Art. 15.03(b), C.C.P.)
   b. When a summons may be issued. (Art. 15.03(a), C.C.P.)
   c. Who may issue. (Art. 15.03(a), C.C.P.)
   d. How served. (Art. 15.03(b), C.C.P.)
   e. If defendant fails to respond, warrant shall be issued. (Art. 15.03(b), C.C.P.)
2. Summons issued by judge.
   a. Form of summons. (Art. 23.03(c), C.C.P.)
   b. Summons may be issued only upon request from prosecutor. (Art. 23.04, C.C.P.)
   c. Court (judge) issues summons. (Art. 23.04, C.C.P.)
   d. How served. (Art. 23.03(c), C.C.P.)
   e. If defendant fails to respond, capias shall be issued. (Art. 23.03(b), C.C.P.)
   f. A summons issued for a felony must include the following notice, clearly and prominently stated in English and in Spanish:

      English: "It is an offense for a person to intentionally influence or coerce a witness to testify falsely or to elude legal process. It is also a felony offense to harm or threaten to harm a witness or prospective witness in retaliation for or on account of the service of the person as a

witness or to prevent or delay a person's service as a witness to a crime." (Art. 23.03, C.C.P.) (Note: Although this section presumably is for felony summons, a misdemeanor summons is to be in the same form as the felony summons; thus municipal court summons should also include this wording.)

g. A summons issued to the parents, managing conservator, or guardian of minors (under the age of 17) charged with a non-traffic offense must include a warning that the failure of the parent, managing conservator, or guardian to appear may be punishable as a Class C misdemeanor. (Art. 45.057(e), C.C.P.)

h. Article 45.0215, C.C.P., requires the court to summon the parent or guardian to appear with his or her child (under age 17) to be present for all proceedings.

M. Search Warrants (Chapter 18, C.C.P.)

1. Municipal judges are magistrates. (Article 2.09, C.C.P.) Magistrates have authority to issue search warrants. There are some exceptions; see evidentiary search warrants.
2. Evidentiary search warrants – Only a municipal judge of a court of record who is a licensed attorney may issue an evidentiary search warrant for mere evidence (Art. 18.01(h), C.C.P.), except any magistrate in counties where the only attorney-judge is the district judge and the district court encompasses more than one county, or in which the only judges serving the county who are licensed attorneys are tow or more district judges each of whose district includes more than one county may issue evidentiary or contraband search warrants. (Arts. 18.01(i), 18.02, C.C.P.)
3. Grounds for issuance. (Art. 18.02, C.C.P.)
4. Content of search warrant. (Art. 18.04, C.C.P.)
5. Execution and return of search warrant. (Arts. 18.06, 18.07, and 18.10, C.C.P.)
6. Power of officer executing warrant. (Art. 18.08, C.C.P.)
7. A magistrate's clerk shall make a copy of the affidavit (the probable cause affidavit is public information if executed) available for public inspection in the clerk's office during normal business hours. (Art. 18.01(b), C.C.P.)
8. The governing body of a municipality may by ordinance provide authority to a judge of a municipal court of record to issue a search warrant for the purpose of investigating a health and safety or nuisance abatement ordinance violation. (Sec. 30.0005, G.C.)

N. Failure to Appear

1. Failure to Appear – may be filed when a person has been in custody and released with or without bail and fails to appear according to the terms of being released. (Sec. 38.10, P.C.)
2. Violation of Promise to Appear – may be filed only when the original offense is one charged under Subtitle C, Transportation Code. (Sec. 543.009, T.C.)
3. Juveniles.
   a. A court shall report to the Department of Public Safety a person charged with a traffic offense under Chapter 729 who does not appear before the court as required by law. The court shall also report to the Department on final disposition of the case. (Sec. 729.003, T.C.)
   b. Municipal court may file a report with the Department of Public Safety to suspend or deny issuance of a driver's license for failure to appear or default of a payment of a fine for a misdemeanor punishable by a fine only. This only applies to a person under the age of 17 when the offense was committed. DPS may not reinstate a license until the court that filed the report files an additional report on the final disposition of the case. (Sec. 521.294, T.C.)
   c. If the parents, managing conservator, or guardian fails to appear with their child who is charged with a non-traffic offense, they can be charged with failure to appear with their child, which is punishable as a Class C misdemeanor. (Art. 45.057, C.C.P.)

O. Warrant Fees and Fees for Peace Officer's Service

1. Special expense fee for failure to appear warrants. (Art. 45.203, C.C.P.)
   a. City must have ordinance governing the collection of fee.
   b. Collected if a peace officer executes warrant.
   c. Collected for Failure to Appear offense found in Sec. 38.10, P.C., and Violation of Promise to Appear found in Sec. 543.009, T.C.
   d. Amount to Charge - not to exceed $25.
   e. Paid to city treasury.
2. Fees for services performed by a peace officer. (Art. 102.011, C.C.P.)
   a. Fifty dollars required to be collected upon conviction for processing or executing an arrest warrant or capias. (Art. 102.011(a)(2). C.C.P.)
      - Collected only if a peace officer served or processed warrant or capias.
      - For the services of the following:

- The law enforcement agency that executed the arrest warrant or capias, if the agency requests of the court, not later than the 15th day after the date of the execution of the arrest warrant or capias, the imposition of the fee on conviction;
- The law enforcement agency that processed the arrest warrant or capias, if the executing law enforcement agency failed to request the fee within 15 days; or
- When service is performed by a peace officer employed by the State, 20 percent ($10) of the fees collected must be remitted to the State Comptroller's Office.

b. Thirty-five dollars required to be collected upon conviction for serving a writ not otherwise listed in Article 102.011. Summons would come under this provision. Hence a summons for a defendant or for a parent or guardian would require $35 payment in cost if it is served and there is a conviction. (Art. 102.011(a)(4), C.C.P.)

c. Costs for Executing Process - The defendant is required to pay necessary and reasonable expenses for meals and lodging incurred by a peace officer executing criminal process. (Mileage is assessed at 29 cents per mile.) (Art. 102.011(b), C.C.P.)

P. Contracts

1. Contracts with DPS for denial of renewal of license for Failure to Appear. (Chpt. 706, T.C.)

   a. A city may contract with the Department of Public Safety to provide information necessary for the Department to deny renewal of the driver's license of a person who has failed to appear for a complaint or citation, or fails to pay or satisfy a judgment ordering payment of a fine and cost in the manner order by the court in a matter involving fine-only offenses that municipal court has jurisdiction to hear. (Sec. 706.002(a), T.C.)

   b. If a city has contracted with the Department under this statute, a peace officer authorized to issue citations in the jurisdiction of the city shall issue a written warning to each person to whom the officer issues a citation for a violation of a traffic law. The warning is in addition to any other warning required by law. The warning must state in substance that if the person fails to appear in court as provided by law for the prosecution of the offense, or if the person fails to pay or satisfy a judgment ordering the payment of a fine and cost in the manner order by the court, the person may be denied renewal of the person's driver's license. The written warning may be printed on the same instrument as the citation.

c. Administrative Fee – $30 for each offense submitted to DPS under contract is paid by the defendant.

d. A person who is acquitted of the charge on which the person failed to appear; or the submission was sent to DPS in error; or the records have been destroyed in accordance with the political subdivision's records retention policy does not have to pay the administrative fee and DPS cannot continue to deny driver's license renewal.

2. Contracts for enforcement of certain warrants. (Chpt. 702, T.C.)

a. A home-rule municipality may contract with a county assessor-collector or the Department of Transportation to deny registration or re-registration of a motor vehicle or an outstanding warrant from that municipality for failure to appear or failure to pay a fine on a complaint that involving the violation of a traffic law. (Sec. 702.002, T.C.)

b. Warning may be on citation - If a city has contracted with a county or state agency, a peace officer who is authorized to issue citations in the city shall issue a written warning to each person to whom the officer issued a citation for a violation of a traffic law in the city. The warning must state that if the person fails to appear in court, as provided by law, for the prosecution of the offense or to pay a fine for the violation, the person might not be permitted to register or reregister a motor vehicle in this State.

Q. Nonresident Violator Compact (Chpt. 703, T.C.)

1. Procedures.

a. The "Notice of Failure to Comply" form is completed and the original copy is mailed to the defendant. The court retains copies in a "tickler" or suspense file awaiting reply from the defendant.

b. If the defendant fails to respond within 15 days, the court forwards the second and third copies of the "failure to comply" notice to the Department of Public Safety for action under the Compact.

c. The fourth, fifth, and sixth copies of the notice are still held in the court file. If at any time beyond this time in the process the defendant resolves the case with the court, it is imperative that the court completes the fourth and fifth copies of the notice "Defendant's Receipt" and "Notice of Withdrawal of Suspension." The receipt should be mailed to the defendant and the "Notice of Withdrawal of Suspension" to the Department of Public Safety.

2. Under the terms of the Compact, the following violations are statutorily exempt and no action will be taken:

- Moving traffic violations which alone carry a suspension,

- Equipment violations,
- Inspection violations,
- Motor carrier violations,
- Lease law violations,
- Registration law violations,
- Offenses which mandate personal appearance,
- Size and weight limit violations,
- Parking or standing violations, and
- Transportation of hazardous material violations.

3. No action will be taken on any violation if the date of request of the member state is more than six months after the date on which the traffic citation was issued.

AFTER ARREST

A. Officer's Duty

1. Warrantless arrest – The person making the arrest or the person having custody of the person arrested shall take the person arrested or have him or her taken without unnecessary delay, but not later than 48 hours after the person is arrested before the magistrate who may have ordered the arrest, before a magistrate of the county where the arrest was made without an order, or, if necessary to provide more expeditiously to the person arrested the warning described by Article 15.17, C.C.P., before a magistrate in a county bordering the county in which the arrest was made. (Art. 14.06(a), C.C.P.)
2. Arrest under warrant – The person making the arrest or the person having custody of the person arrested shall take the person arrested or have him or her taken without unnecessary delay, but not later than 48 hours after the person is arrested before the magistrate who may have ordered the arrest, before a magistrate of the county where the arrest was made without an order, or, if necessary to provide more expeditiously to the person arrested the warning described by Article 15.17, C.C.P., before a magistrate in a county bordering the county in which the arrest was made. (Art. 15.17(a), C.C.P.)
3. If magistrate is not available, in cases of misdemeanor, the officer may, whether during the term of court or in vacation, where he or she has a defendant in custody, take of the defendant a bail bond. (Art. 17.20, C.C.P.)

B. Magistrate's Duty

1. The magistrate shall inform in clear language the person arrested, either in person or by closed circuit television, of the accusation against the defendant and of any affidavit filed therewith, of his or her right to retain counsel, of his or her right to remain silent, of his or her right to have an attorney present during any interview with peace officers or attorney represent the state, of his or her right to terminate the interview at any time, and of his or her right to have an examining trial. (Art. 15.17(a), C.C.P.)

2. The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel. If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, C.C.P. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. If the person arrested is indigent and requests appointment of counsel and if the magistrate is authorized under Article 26.04, C.C.P. to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051, C.C.P. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the court's designee authorized under Article 26.04, C.C.P., to appoint counsel in the county, the forms requesting the appointment of counsel. (Art. 15.17(a), C.C.P.)

3. A person who is arrested without a warrant and who is detained in jail must be released on bond in an amount not to exceed $5000, not later than the 24th hour after the person's arrest if the person was arrested for a misdemeanor and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond the person must be released on personal bond. If the person arrested was arrested for a felony, the person must be released on bond in an amount not to exceed $10,000 not later than the 48 hour after person's arrest and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the person must be released on personal bond. On the filing of an application by the attorney representing the state, a magistrate may postpone the release of a person for not more than 72 hours after the person's arrest. An application filed under this subsection must state the reason a magistrate has not determined whether probable cause exists to believe that the person

committed the offense for which the person was arrested. (Art. 17.033, C.C.P.)

4. Out-of-County Fine-only Offenses – A magistrate may take a written plea of guilty or nolo contendere, assess the fine, determine costs, give jail credit, accept payment, or determine indigence, and discharge the defendant where appropriate. The magistrate accepting a plea must forward, the plea, order of the court, and any fine and costs collected to the original court within 10 business days. (Art. 15.18, C.C.P.)

BONDS

(A.G. Op. Nos. JM-363, JM-461, JM-701, JM-760, DM-57)

A. Bond Rules

Bond rules applicable to every criminal case and every court. (Art. 17.38, C.C.P.)

B. Definition of Bail (Art. 17.01, C.C.P.)

"Bail" is the security given by the accused that he/she will appear and answer before the proper court the accusation brought against him/her, and includes a bail bond or personal bond.

C. Bail Bond

1. Definition of bail bond. (Art. 17.02, C.C.P.)
2. Requisites of a bail bond. (Art. 17.08, C.C.P.)
3. Sureties.
   a. Corporation surety. (Art. 17.06, C.C.P.)
      i. Corporation to file with county clerk power of attorney designating agent. (Art. 17.07, C.C.P.)
      ii. Agents making bail bonds shall be binding and binding obligation on corporation.
   b. Disqualified Sureties (Arts. 17.10 and 17.11, Sec. 2, C.C.P.) Article 17.11 provides when a surety is deemed in default. "A surety shall be deemed in default from the time execution may be issued on a final judgment in a bond forfeiture proceeding under the Texas Rules of Civil Procedure, unless the final judgment is superseded by the posting of a *supersedeas* bond." (Arts. 17.10 and 17.11, C.C.P.) (A *supersedeas* bond is a bond required of one who petitions to set aside a judgment or execution and from which the other party may be made whole if the action is unsuccessful.)
   c. Sureties required to show evidence of sufficiency. (Art. 17.11, C.C.P.)

d. Oath of sureties. (Art. 17.13, C.C.P.)

e. Affidavit not conclusive. (Art. 17.14, C.C.P.)

f. Surety may relieve himself/herself of undertaking. (Art. 17.16, C.C.P.)

g. Surety may obtain a warrant (Art. 17.19, C.C.P.) (Article 17.19 provides that any surety desiring to surrender his or her principal must notify the principal's attorney if the principal is represented by an attorney, in a manner provided by Rule 21a, Texas Rules of Civil Procedure, of the surety's intention to surrender the principal before filing an affidavit of intention to surrender with the court. The affidavit must include a statement regarding the notice to the attorney.)

4. A magistrate, judge, or peace officer may take a bail bond. (Arts. 17.05, 17.20, 17.21, 17.22, C.C.P.)

5. A bond may not be altered except with consent of the parties of the bond. [*Gilford v. State*, 362 S.W.2d 843 (Tex. Crim. App. 1962)]

D. Personal Bond (Art. 17.03, C.C.P.) (A.G. Op. JM-760)

1. Release on personal bond when complaint and warrant do not originate in county of arrest. (Art. 17.031, C.C.P.)

2. Requisites of personal bond. (Art. 17.04, C.C.P.)

3. Only a magistrate may release on personal bond. (Art. 17.03, C.C.P.) (A.G. Op. JM-760)

E. Bail Bond Certificates (Art. 17.045, C.C.P.)

F. Cash Bond (Art. 17.02, C.C.P.) (A.G. Op. C-740)

1. No authority to require cash to exclusion of others. [*Ex parte Deaton*, 582 S.W.2d 151 (Tex. Crim. App. 1979); *Ex parte Rodriques*, 583 S.W.2d 792 (Tex. Crim. App. 1979)]

2. Only instance where a cash bond may be required is in case of bond forfeiture and capias issued for defendant's arrest. (Art. 23.05, C.C.P.)

G. Rules for Fixing Amount of Bail (Art. 17.15, C.C.P.)

1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.

2. The power to require bail is not to be so used as to make it an instrument of oppression.

3. The nature of the offense and the circumstances under which it was committed are to be considered.

4. The ability to make bail is to be regarded, and proof may be taken upon this point. (Factors that need to be considered when determining the bail applicant's ability to make bail include work record, family ties, residency, prior criminal record, and adherence to previous bail bond conditions. *Ex parte Goosby*, 685 S.W.2d 440 (Tex. App.-Houston [1st Dist.] 1985, no writ). The punishment permitted by law is to be considered in addition to the ability to make bail. *Ex parte Penagos*, 810 S.W. 796 [Tex. App.-Houston (1st Dist. 1991])

5. The future safety of a victim of the alleged offense and the community shall be considered. (Art. 17.15, C.C.P.) [Considering the safety of a victim is just one factor in setting bail and does not justify the detention of a presumptively innocent defendant by the use of excessive bail. *Ludwig v. State*, 812 S.W.2d (Tex. Crim. App. 1991)]

H. Conditions of Bail

1. Persons charged with prostitution: magistrate may require person to receive counseling or education or both relating to AIDS. (Art. 17.45, C.C.P.)

2. Persons charged with sexual offenses, assaultive offenses, incest, solicitation of a child, or sexual performance by a child if committed against a child 12 years of age or younger: magistrate may require defendant to not directly communicate with the alleged victim or go near a residence, school, or other location as specifically described in the bond frequented by the alleged victim. (Art. 17.41, C.C.P.)

3. A magistrate may require as a condition of release on personal bond that the defendant submit to home curfew and electronic monitoring under the supervision of an agency designated by the magistrate. The cost of monitoring may be assessed as court costs or ordered paid directly by the defendant as a condition of bond. (Art. 17.43, C.C.P.)

4. A magistrate may require as a condition of release on bond that the defendant submit to:

    - Home confinement and electronic monitoring under the supervision of an agency designated by the magistrate; or
    - Testing on a weekly basis for the presence of a controlled substance in the defendant's body. (Art. 17.44, C.C.P.)

    If a defendant violates a condition of home confinement and electronic monitoring, refuses to submit to a test for controlled substance, or submits to a test for controlled substances and the test indicates the presence of a controlled substance in the defendant's body, the magistrate may revoke the bond and order the defendant arrested. (Art. 17.44, C.C.P.)

5. A magistrate shall require on release that a defendant charged with a subsequent offense under Section 49.04-49.06, P.C., or an offense under

Section 49.07 or 49.08, P.C. (unless the magistrate finds that to require the device would not be in the best interest of justice), the installation on a motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant a device that uses a deep-lung breath analysis mechanism (ignition interlock) to make impractical the operation of a motor vehicle if ethyl alcohol is detected in the breath of the operator; and not operate any motor vehicle unless the vehicle is equipped with that device. (Art. 17.441, C.C.P.)

If the defendant is required to have the device installed, the magistrate shall require that the defendant have the device installed on the appropriate motor vehicle at the defendant's expense, before the 30th day after the date the defendant is released on bond. (Art. 17.441. C.C.P.)

The magistrate may designate an appropriate agency to verify the installation of the device and to monitor the device. If the magistrate designates an agency under this subsection, in each month during which the agency verifies the installation of the device or provides a monitoring service the defendant shall pay a fee to the designated agency in the amount set by the magistrate. The defendant shall pay the initial fee at the time the agency verifies the installation of the device. In each subsequent month during which the defendant is required to pay a fee, the defendant shall pay the fee on the first occasion in that month that the agency provides a monitoring service. The magistrate shall set the fee in an amount not to exceed $10 as determined by the county auditor, or by the commissioners court of the county if the county does not have a county auditor, to be sufficient to cover the costs incurred by the designated agency in conducting the verification or providing the monitoring service, as applicable in that county. (Art. 17.441(d), C.C.P.)

6. Defendants who may be mentally ill. (Arts. 16.22 and 17.032)

   a. Magistrate is required to release on personal bond, a mentally ill defendant, if:

      - Defendant has not been charged with or previously convicted of a violent offense (murder; capital murder; kidnapping; aggravated kidnapping; indecency with a child; assault aggravated assault; aggravated sexual assault; injury to a child, elderly individual, or invalid; or aggravated robbery);
      - Defendant is examined by mental health expert;
      - Examining expert, in a report submitted to magistrate, concludes that the defendant is mentally ill and is nonetheless competent to stand trial; and recommends mental health treatment for the defendant;
      - Magistrate determines in consultation with the mental health provider that appropriate mental health services for the defendant are available through the Texas Department of

Mental Health and Mental Retardation under Section 534.053, H.S.C., or through another mental health services provider.

- Magistrates may order a defendant to submit to an examination in a mental health facility determined by a local authority on that authority's request. (Art. 16.22, C.C.P.)

b. Magistrate may require as a condition of release on personal bond that the defendant submit to outpatient or inpatient mental health treatment if:

- the defendant's mental illness is chronic in nature; or
- ability to function independently will continue to deteriorate if the defendant is not treated.

c. In addition, the magistrate may require the defendant to comply with other conditions that are reasonably necessary to protect the community.

7. Persons charged with stalking. (Sec. 42.072, P.C.)

a. Magistrate may require as a condition of release on bond that a defendant not communicate directly or indirectly with the victim; or go to or near the residency, place of employment, or business of the victim or to or near a school, day-care facility, or similar facility where a dependent child or the victim is in attendance; if the magistrate requires the prohibition, the magistrate shall specifically describe the prohibited locations and the minimum distances, if any, that the defendant must maintain from the locations. (Art. 17.46, C.C.P.)

b. Magistrate may, at the detention hearing, issue an order for emergency protection on his or her own motion, or the motion of the victim, guardian of the victim, peace officer, or prosecuting attorney. The order may prohibit the arrestee from committing: family violence or a stalking related act; communicating directly with a member of the family or household in a threatening or harassing manner; or a threat through any person to a member of the family or household; or going near the residence, child care facility, or school where the child protected under the order resides or attends. Specific locations and distances must be included in the order unless the magistrate determines for the safety of the person or persons protected by the order that specific descriptions of the location should be omitted. (Art. 17.292, C.C.P.)

8. Arrest for family violence. (Art. 17.292, C.C.P.) Dating violence included in family violence. "Dating relationship" is a continuing relationship of a romantic or intimate nature. Casual acquaintanceship and ordinary fraternization are excluded. (Sec. 71.0021, F.C.) Section 71.004, F.C., amended to include dating violence into definition of family violence.

a. A magistrate may, at the detention hearing, issue an order for emergency protection on his or her own motion, or the motion of the victim, guardian of the victim, peace officer, or prosecuting attorney.

b. A magistrate must issue an order for emergency protection if the arrest is for an offense that also involves serious bodily injury to the victim, or the use or exhibition of a deadly weapon during the commission of an assault. (Art. 17.292(b), C.C.P.)

c. An emergency protection order remains in effect up to the 61st day, but not less than 31 days after the date of issuance. (Art. 17.292(i), C.C.P.)

d. The order:

- May prohibit the arrestee from committing: family violence or a stalking related act;
- May prohibit communicating directly with a member of the family or household in a threatening or harassing manner; or
- May prohibit a threat through any person to a member of the family or household; or
- May prohibit going near the residence, child care facility, or school where the child protected under the order resides or attends; or
- May suspend a license to carry a concealed handgun (Art. 17.292(l), C.C.P.)
  - A magistrate or magistrate's clerk shall immediately send a copy of the order suspending the concealed handgun license to the Department of Public Safety (DPS demands the surrender of the suspended license from the license holder.) (Art. 17.293, C.C.P.);
- Must specifically describe prohibited locations and minimum distances, if any, that the party must maintain, unless the magistrate determines for the safety of the person or persons protected by the order that specific description of the locations should be omitted. (Art. 17.292, C.C.P.)

e. A magistrate issuing an order for emergency protection shall send a copy of the order to the chief of police in the municipality where the member of the family or household or individual protected by the order resides, if the person resides in a municipality, or to the sheriff of the county where the person resides, if the person does not reside in a municipality. (Art. 17.292(g), C.C.P.)

f. If the victim of the offense is not present when the order is issued, the magistrate issuing the order shall order an appropriate peace officer to make a good faith effort to notify, within 24 hours, the victim that the order has been issued by calling the victim's residence and place of employment. (Art. 17.292(g), C.C.P.)

g. The clerk of the court shall send a copy of the order to the victim. (Art. 17.292(g), C.C.P.)

I. Proceedings when Bail is Granted (Art. 17.25, C.C.P.)

After a full examination of the testimony, the magistrate shall proceed to make an order that the accused execute a bail bond. (Art. 17.25, C.C.P.)

J. Setting Bail by Telephone

A judge or magistrate lacks the authority to set bail by telephone. (A.G. Op. DM-57 [1991])

K. Setting Bail by Closed Circuit Television

A closed circuit television system must provide for two-way communication of image and sound between the arrested person and the magistrate and a recording made that shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on which the recording is made if the person is charged with a misdemeanor or the 120th day if the offense charged is a felony. (Art. 15.17, C.C.P.)

L. Magistrate's Discretion in Setting Bail

Although magistrates have broad discretion in setting the amount and conditions of bail, they do not have authority to require a cash or surety bond to the exclusion of the other. [*Ex parte Deaton*, 582 S.W.2d 151 (Tex.Crim.App. 1979); *Ex parte Rodriques*, 583 S.W.2d 792 (Tex.Crim.App. 1979)]

When a municipal judge acts as a magistrate in setting bonds, another judge acting in a magistrate's capacity lacks authority to change status or amount of bonds. [*Ex parte Clear*, 573 S.W. 2d 224 (Tex.Cr.App. 1987; *Guerra v. Garza,* 987 S.W. 2d 593 (Tex.Crim.App. 1999)]

M. Differential Bail Amount

The court must accept a bond of any kind when it is presented in proper form; magistrates may not set a "differential bail amount" depending upon whether a cash or surety bond is used. [*Ex parte Deaton*, 582 S.W.2d 151 (Tex.Crim.App. 1979); *Ex parte Rodriques*, 583 S.W.2d 792 (Tex.Crim.App. 1979); A.G. Op. JM-363]

N. Reasonable Time Given to Procure Bail (Art. 17.26, C.C.P.)

1. Procedure when defendant ready to give bail. (Art. 17.28, C.C.P.)
2. Procedure after accused posted bail. (Arts. 17.29 and 17.291, C.C.P.)

a. After accused has posted bond, accused is to be released. (Art. 17.29, C.C.P.)

b. In family violence cases. (Art. 17.291, C.C.P.)

   i. Art. 17.29 does not apply when a person has been arrested or held without a warrant in the prevention of family violence if there is probable cause to believe the violence will continue if the person is immediately released. The head of the agency arresting or holding such a person may hold the person for a period of not more than four hours after bond has been posted. This detention period may be extended for an additional period not to exceed 48 hours, but only if authorized in writing directed to the person having custody of the detained person by a magistrate who concludes:

      - the violence should continue if the person is released; and
      - if the additional period exceeds 24 hours, probable cause exists to believe that the person committed the instant offense and that, during the 10-year period preceding the date of the instant offense, the person has been arrested:
        - on more than one occasion for an offense involving family violence; or
        - for any other offense, if a deadly weapon, as defined by Section 1.07, Penal Code, was used or exhibited during commission of the offense or during immediate flight after commission of the offense.

   ii. Before releasing on bail a person arrested or held without a warrant in the prevention of family violence, the agency holding the person shall make a reasonable attempt to give personal notice of the imminent release to the victim of the alleged offense or to another person designated by the victim to receive the notice. (Art. 17.29, C.C.P.)

   iii. If the victim of the offense is not present when the order is issued, the magistrate issuing the order shall order an appropriate peace officer to make a good faith effort to notify, within 24 hours, the victim that the order has been issued by calling the victim's residence and place of employment. The clerk of the court shall send a copy of the order to the victim. (Sec. 17.292, C.C.P.)

O. Records of Bail Required to Be Kept (Art. 17.39, C.C.P.)

P. Bonds and Traffic Case (A.G. Op. Nos. JM-363, JM-701)

Q. Bond Refunds

Bond refunds - Bonds are to be refunded when conditions of bond complied with. (A.G. Op. No. C-740), (*De Leon v. Pennington*, 759 S.W.2d 201, 202 [Tex. App. –San Antonio, 1988] no writ) Cash bonds may not be converted to fine.

A person other than the defendant may make a cash bail bond deposit with the court officer to secure the defendant's release from custody pursuant to Article 17.02 of the Code of Criminal Procedure. The receipt for a cash deposit should be issued in the name of the defendant. While the court officer is not required to notify the third party depositor that the funds will be returned to the defendant, no statutory prohibition precludes such notification. If the defendant complies with the conditions of the bond, and upon court order, the bond funds must be returned to the defendant. The court officer may not withhold a cash bail bond refund until fines assessed against the defendant are paid. (A.G. Op. No. JC-0024, March, 1999)

BOND FORFEITURES

A. Defendant's Failure to Appear

1. When a defendant fails to appear in court, bail is forfeited. (Art. 22.01, C.C.P.)
2. An action by the State to forfeit a bail bond under this chapter must be brought not later than the fourth anniversary of the date the principal fails to appear in court. (Art. 22.18, C.C.P.)
3. Where a forfeiture of bail is declared, a capias shall be immediately issued for the arrest of the defendant **but in no case later than 10 business days after the issuance of the order of forfeiture.** (Art. 23.05, C.C.P.) **(SB 1336 eff. 6/20/03)** This capias may be executed by a peace officer or by a private investigator licensed under the Private Investigators and Private Security Agencies Act (Article 4413 (29bb), Vernon's Texas Civil Statutes) (Art. 23.05, C.C.P.)

B. Bond Forfeiture Procedures

1. Defendant's name shall be distinctly called at courthouse door (Art. 22.02, C.C.P.); after clerk of bailiff makes the call, whoever made call should prepare a certificate indicating the call was made (file with bond forfeiture case).

2. When defendant fails to appear, the prosecutor should make a motion for bond forfeiture; when the court grants the motion, a judgment *nisi* is entered that the State of Texas recover bond amount. (Art. 22.02, C.C.P.)

3. After a forfeiture is declared, the clerk shall docket the case upon the *scire facias* or upon the civil docket, in the name of the State of Texas, as plaintiff, and the principal and his or her sureties, if any, as defendants. (Art. 22.10, C.C.P.)

4. Upon entry of judgment *nisi*, citation to sureties shall be issued to sureties notifying them of bond forfeiture proceedings. (Art. 22.03, C.C.P.)

   a. Requisites of citation (Art. 22.04, C.C.P.)(Tex. R. Civ. Proc. 99) Citation shall:

      - Be styled "The State of Texas";
      - Be signed by the clerk and under court seal;
      - Contain name and location of the court;
      - Show date of filing of the petition (judgment *nisi*);
      - Show date of issuance of citation;
      - Show file number;
      - Show names of parties;
      - Be directed to the defendant(s) (sureties);
      - Show name and address of attorney for plaintiff; otherwise address of plaintiff;
      - Contains time within which the defendant(s) (sureties) is required to file a written answer with the clerk who issued citation;
      - Contain the address of the clerk (court);
      - Contain the time within which the defendant is required to file a written answer with the clerk who issued the citation;
      - Notify the defendant(s) (sureties) in case of failure to file an answer, judgment by default may be rendered for relief demanded in the petition;
      - Direct the defendant(s) (sureties) to file a written answer on or before 10:00 a.m. on the Monday next after the expiration of 20 days after the date of service; and
      - The citation shall include the following notice to the defendant: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you."

   b. Sureties entitled to notice as in civil actions (Art. 22.05, C.C.P.) (Tex. R. Civ. P. 106, 109, 114, 116, 117); method of service is:

- Delivering to the defendant(s) (sureties), in person, a true copy of the citation with the date of delivery endorsed on the citation; a copy of the judgment *nisi* is required to be attached to citation; or
- Mailing to the defendant(s) (sureties) by registered or certified mail, return receipt requested addressee only, a true copy of the citation with a copy of the judgment *nisi* attached.
- If service has been unsuccessful by either of the abovementioned methods, the prosecutor may make a motion supported by an affidavit stating the location of the defendant's (sureties) usual place of business or usual place or abode or other place where the defendant can probably be found and stating specifically the facts showing that service has been attempted by the methods mentioned above; the court may then authorize service by:
  - Leaving a true copy of the citation, with a copy of the judgment *nisi* attached with anyone over 16 years of age at the location specified in the affidavit; or
  - In any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant(s) (sureties) notice of the suit.
- Service by publication: Application must be made by the city attorney by affidavit. The affidavit must state that the residence of defendant is unknown or that the defendant is a transient person and after due diligence the defendant cannot be located.
- Where there are two or more defendants, the citation may be directed to all of them by name.
- The clerk shall have the citation published once each week for four consecutive weeks, the first publication to be at least 28 days before the return day of the citation; the clerk shall endorse the citation and show how and when the citation was executed, specifying the dates of publication; a copy of the citation shall be attached to the citation [If the defendant fails to appear, the court is required to appoint an attorney (Tex. R. Civ. P. 244)].

c. Not necessary to notify defendant (defendant in criminal case) unless defendant has provided an address on the bond (If defendant provides address, notification–copy of citation with judgment *nisi* attached–is sent regular mail.). (Art. 22.05, C.C.P.)

d. A nonresident surety, a transient surety, or where surety's address unknown, citation can be served by publication upon application in writing to the clerk. (Art. 22.06, C.C.P.)

e. If surety dead at time of forfeiture, forfeiture valid. (Art. 22.09, C.C.P.)

5. Bond forfeiture case docketed on *scire facias* docket. (Art. 22.10, C.C.P.)

6. Sureties may answer in writing. (Art. 22.11, C.C.P.)

7. After trial on issues, judgment is final. (Art. 22.14, C.C.P.)
8. If sureties fail to answer, judgment is by default (Art 22.15, C.C.P.); default judgment must be on file with the clerk of the court for 10 days, exclusive of the day of filing and the day of judgment before it shall be granted. (Tex. R. Civ. Proc. 107)
9. A surety is not considered in default until the 11th day after final judgment is entered. (Sec. 1704.212, Occupations Code) (SB 119; eff. 9/1/01)

C. Powers of the Court (Art. 22.125, C.C.P.)

The court may:

- exonerate the defendant and his or her sureties, if any, from liability on the forfeiture;
- remit the amount of the forfeiture;
- set aside the forfeiture only as expressly provided by Chapter 22, C.C.P.; or
- the court may approve any proposed settlement of the liability on the forfeiture that is agreed to by the State and by the defendant or the defendant's sureties, if any. (Art. 22.125, C.C.P.)

D. Cash Bond Forfeiture

1. Forfeiture of Cash Bond (Art. 45.044, C.C.P.) - A judge may, if defendant posts cash bond, enter a judgment of conviction and forfeit cash bond to satisfy fine and costs of defendant if:
    - Defendant has entered a written and signed plea of nolo contendere and a waiver of jury trial; and
    - Defendant fails to appear according to the terms of the defendant's release.
2. Judge required to immediately notify defendant of conviction and forfeiture and the right to apply for a new trial within 10 days from the judgment.
3. If defendant applies for new trial, court is required to permit the defendant to withdraw the previously entered plea of nolo contendere and waiver of jury trial.

TRIAL PROCESS

A. Pre-trial (Art. 28.01, C.C.P.)

1. Court may set any case for pre-trial. (Art. 28.01, Sec. 1, C.C.P.)
2. Pre-trial shall be to determine any of the following matters:

- Arraignment of the defendant. (Art. 28.01, Sec. 1(1), C.C.P.) (Art. 26.011, C.C.P., prohibits the clerk, and thereby presumptively the court, from requiring the presence of the defendant in order to accept a waiver of arraignment from an attorney representing the defendant.) (HB 840; eff. Immediately);
- Pleadings of the defendant. (Art. 28.01, Sec. 1(2), C.C.P.);
- Special pleas, if any. (Art. 28.01, Sec. 1(3), C.C.P.);
- Exceptions to the form or substance of the complaint. (Art. 28.01, Sec. 1(4), C.C.P.) If a defendant does not object to a defect, error, or irregularity of form or substance in a charging instrument before the date on which the trial on the merits commences, the defendant waives and forfeits the right to object to the defect, error, or irregularity. Nothing in this article prohibits a trial court from requiring that an objection to a charging instrument be made at an earlier time. (Art. 45.019(f), C.C.P.);
- Motions for continuance; provided that grounds for continuance not existing or not known at the time may be presented and considered at any time before the defendant announces ready for trial. (Art. 28.01, Sec. 1(5), C.C.P.);
- Motions to suppress evidence. (Art. 28.01, Sec. 1(6), C.C.P.);
- Discovery. (Art. 28.01, Sec. 1(7), C.C.P.);
- Entrapment. (Art. 28.01, Sec. 1(8), C.C.P.);
- Motion for appointment of interpreter. (Art. 28.01, Sec. 1(9), C.C.P.):
  - If a defendant or a witness does not understand and speak the English language, an interpreter must be sworn to interpret for him or her. (Art. 38.30, C.C.P.);
  - If a defendant or a witness is deaf, the court shall appoint a qualified interpreter to interpret. An interpreter is entitled to a reasonable fee determined by the court after considering the recommendations of the Texas Commission for the Deaf and Hard of Hearing. When travel of the interpreter is involved all the actual expenses of travel, lodging, and meals incurred by the interpreter pertaining to the case shall be paid at the same rate applicable to state employees. (Art. 38.31, C.C.P.)
  - All interpreters for the deaf and hard of hearing and foreign language court interpreters must be certified. The Commission for the Deaf and Hard of Hearing and the Texas Department of Licensing and Regulation must develop applications, exams, certification, and monitoring procedures. Cities located in counties with a population of less than 50,000 do not have to have a certified interpreter, however, the interpreter must be qualified under the Rules of Evidence, over 18 years of age, and not a party to the cause. (Chpt. 57, G.C.)

3. Matters not raised or filed seven days before the hearing will not thereafter be allowed to be raised or filed, except by permission of the court for good cause shown. (Art. 28.01, Sec. 2, C.C.P.)
4. Defendant is to have sufficient notice from the court of the date of the hearing to allow the defendant not less than 10 days in which to raise or file preliminary matters. (Art. 28.01, Sec. 2, C.C.P.)
5. Notice may given by (Art. 28.01, Sec. 3, C.C.P.):
    - announcement in open court in the presence of the defendant or his or her attorney of record;
    - personal service upon the defendant or his or her attorney of record; or
    - mail to either the defendant or his attorney of record deposited by the clerk in the mail at least six days prior to the date set for hearing.
6. Order of argument. (Art. 28.02, C.C.P.)

B. Speedy Public Trial

Trial to be a speedy public trial. (Arts. 1.05 and 1.24, C.C.P.) (*Meshell v. State*, 739 S.W.2d 276 (Tex. Crim. App. 1987)

C. Trial not Bifurcated

Trial not bifurcated. [Art. 37.07, C.C.P.; *Brown v. State*, 507 S.W.2d 235 (Tex. Crim. App. 1974)]

D. Continuances (Chapter 29, C.C.P.)

1. By operation of law (Art. 29.01, C.C.P.):
    - The individual defendant has not been arrested;
    - A defendant corporation or association has not been served with summons; or
    - There is not sufficient time for trial at that term of court.
2. For religious holy days - A defendant, defense attorney, prosecutor, or juror may request a continuance because of a religious holy day (Arts. 29.011 and 29.012, C.C.P.);
3. By agreement of both parties in open court. (Art. 29.02, C.C.P.);
4. For sufficient cause set forth in a written motion. (Art. 29.03, C.C.P.);
5. If counsel for the State is not present, the judge may continue the case. (Art. 45.031(1), C.C.P.)

6. **A legislative continuance applies to members of the Legislature and members-elect. (Sec. 30.003(b),(c), and (c-1), Civil Practice and Remedies Code. (SB 430 eff. 4/24/03)**

E. Subpoenas

1. Subpoenas issued to secure witnesses appearance at trial. (Art. 24.01, C.C.P.)
2. The justices of the peace and municipal courts shall maintain a record of the number and style of each criminal action before the court; the name of each witness subpoenaed, attached, or recognized to testify in the action; and whether the witness was a witness for the State or for the defendant. (Art. 102.002, C.C.P.)
3. A defendant is liable on conviction for the witness fees for witnesses in the defendant's case. If a defendant convicted of a misdemeanor does not pay the defendant's fines and costs, the county or municipality, as appropriate, is liable for the fees for the witnesses in the defendant's case. (Art. 102.002, C.C.P.) (Note: The fees were repealed by SB 577 eff. 9/1/99)
4. Both defense and prosecution entitled to subpoena witnesses. (Tex. Const. Art. I, Sec. 10) (Art. 1.05, C.C.P.)
5. No discretion in issuing subpoena. *(Edmondson v. State*, 43 Tex. 230 [1875])
6. Who may serve subpoenas: a peace officer, a person who is at least 18 years old and, at the time the subpoena is issued, not a participant in the proceeding for which the appearance is sought. (Art. 24.01, C.C.P.)
7. A court (judge) or clerk may issue subpoena. (Art. 24.01(d), C.C.P.)
8. No court seal required. (Arts. 24.01, C.C.P.)
9. *Subpoena duces tecum* defined: a subpoena requiring a witness to bring with him or her any instrument of writing or other thing desired as evidence. (Art. 24.02, C.C.P.)
10. Subpoenas for child witnesses: if a witness is younger than 18, the court may issue a subpoena directing a person having custody, care, or control of the child to produce the child in court. (Art. 24.011, C.C.P.)
11. Application for subpoena. (Art. 24.03, C.C.P.)
    - Felony cases - Application for subpoena required to be in writing or by electronic means. (Art. 24.03(a), C.C.P.)
    - Misdemeanor municipal courts cases – No provisions in statute requiring application to be in writing.
    - Information required to serve subpoena – Name of witness desired and location or address of witness.

12. Service and return of subpoena – The officer may (Arts. 24.04, 24.17, C.C.P.):

    - read the subpoena in the hearing of the witness;
    - deliver a copy of the subpoena to the witness;
    - electronically transmit a copy of the subpoena, acknowledgment of receipt requested, to the last known electronic address of the witness (Art. 24.04, C.C.P.); or
    - mail a copy of the subpoena by certified mail, return receipt requested to the last known address of the witness unless the applicant for the subpoena requests in writing that the subpoena not be served by certified mail; or the proceeding for which the witness is being subpoenaed is set to begin within seven business days after the date the subpoena would be mailed.

13. Enforcing the subpoena. (Arts. 24.05 - 24.10, C.C.P.)
14. Attachment for a witness. (Arts. 24.11, 24.12, 24.13, 24.14, C.C.P.)
15. Bail for witnesses. (Arts. 24.21 - 24.26, C.C.P.)
16. If defendant convicted, $5.00 can be collected because peace officer summoned jury. (Art. 102.011(a)(7), C.C.P.)

F. If Counsel for State Not Present (Art. 45.030, C.C.P.)

1. The judge may postpone the trial to a date certain;
2. The judge may appoint an attorney pro tem as provided by Code of Criminal Procedure to represent the State (Note: See Art. 2.07(g), C.C.P., for appointing an attorney pro tem); or
3. The judge may proceed to trial. (Note: Only the prosecutor may announce ready for trial. If the prosecutor is not present, to announce ready and present evidence, there is no evidence against the defendant before the court. Thus, the court would find the defendant not guilty.)

G. Jury Trial

1. Complaint (Art. 45.018, C.C.P.):

    - A sworn complaint should already be on file;
    - If a ticket has been filed as the original complaint, a sworn complaint should be filed. (Art. 27.14(d), C.C.P.)

2. Case files - Court should establish a method for the prosecutor's office to check out case files to review and prepare State's case for trial.
3. Information collected by the court or by a prosecuting attorney during the jury selection process about a person who serves as a juror, including the juror's home address, home telephone number, social security number,

driver's license number, and other personal information, is confidential and may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court in which the person is serving or did serve as a juror. On a showing of good cause, the court shall permit disclosure of the information sought. (Art. 35.29, C.C.P.)

4. Summons the venire. (List of persons to be summoned as jurors from which six qualified persons shall be selected to serve as jurors in the case.) Judge required to issue a writ of venire. (Art. 45.027, C.C.P.)

   a. Selection of prospective jurors - Municipal court jurors must be residents of the city in which they are called to serve. (Sec. 62.501, G.C.)

   b. Juror exemptions. (Sec. 62.106, G.C.)

      i. Exemptions:

         - Over 70 years of age;
         - Has legal custody of a child younger than 10 years of age and jury service requires leaving the child without adequate supervision;
         - Is a student of public or private secondary school;
         - Is a person enrolled and in actual attendance at an institution of higher education;
         - Is an officer or an employee of the Senate, the House of Representatives, or any department, commission, board, office, or other agency in the legislative branch of state government;
         - Is summoned for service in a county with a population of at least 2,000,000, unless that county uses a jury plan under Section 62.011, G.C., and the period authorized under Section 62.011(b)(6), G.C., exceed two years, and he or she has served as a petit juror in the county during the 24-month period preceding the date he or she is to appear for jury service;
         - A person is exempt who is a primary caretaker of an invalid unable to care for himself/herself; or
         - Is summoned for service in a county with a population of at least 250,000 and the person has served as a petit juror in the county during the three-year period preceding the date the person is to appear for jury service. (This does not apply if the jury wheel in the county has been reconstituted after the date the person served as a petit juror.) (Section 62.106(8) and (b), G.C.)

ii. Claiming exemption (Sec. 62.107, G.C.)(Art. 35.04, C.C.P.) – A person can claim, without appearing; file a sworn statement of the ground of the exemption with the court clerk before date supposed to appear.

iii. Permanent exemption (Sec. 62.107(c), G.C.) – Any person over 70 years of age may file a statement with court clerk and claim a permanent exemption; clerk shall deliver a copy of statement to county tax assessor-collector.

c. Clerk required to provide a jury handbook to each juror who is required to read it before jury service begins (Chpt. 23, Subchpt. C, Sec. 23.202, G.C.)

d. The court is required to appoint a qualified interpreter for deaf or hearing-impaired persons during a *voir dire*, trial, and jury deliberations. Further, the interpreter is entitled to a fee determined by the court in consultation with the Texas Commission for the Deaf and Hearing-Impaired. If the interpreter is required to travel, all actual expenses of travel, lodging, and meals incurred must be paid at the same rate as State reimbursement. In a municipal court proceeding, a deaf or hearing-impaired juror may request an auxiliary aid or service. The city shall honor the request unless the city can demonstrate that another effective means of communication exists. The city shall pay the costs unless the auxiliary aid or service will result in a fundamental alteration of the municipal court proceeding or an undue financial or administrative burden. (Sec. 62.1041, G.C.) (Note: *For guidance, contact the Texas Commission for the Deaf and Hearing-Impaired at (512) 451-8494 in Austin.)* All interpreters for the deaf and hard of hearing must be certified. The Commission for the Deaf and Hard of Hearing and the Texas Department of Licensing and Regulation develop applications, exams, certification, and monitoring procedures.

e. When a prospective juror fails to appear for jury duty, the prospective juror may be fined up to $100 for contempt. (Art. 45.027, C.C.P)

f. Jury fees - A defendant in a justice or municipal court who requests a trial by jury and who withdraws the request not earlier than 24 hours before the time of trial shall pay a jury fee of $3 if the defendant is convicted of the offense or final disposition of the defendant's case is deferred. (Art. 102.004, C.C.P.)

g. Jury compensation. (Sec. 61.001, G.C.) (Municipal courts are not required to pay jurors.)

5. Jury Trial Proceedings.

a. If counsel for State not present, the judge may (Art. 45.030, C.C.P.):

- postpone the trial to a date certain;

- appoint an attorney pro tem as provided by C.C.P. to represent the State (Note: See Art. 2.07(g), C.C.P., for appointing an attorney pro tem); or
- proceed to trial. (Note: Only the prosecutor may announce ready for trial. If the prosecutor is not present, to announce ready and present evidence, there is no evidence against the defendant before the court. Thus, the court would find the defendant not guilty.)

b. If a defendant does not object to a defect, error, or irregularity of form or substance in a charging instrument before the date on which the trial on the merits commences, the defendant waives and forfeits the right to object to the defect, error, or irregularity. Nothing in this article prohibits a trial court from requiring that an objection to a charging instrument be made at an earlier time. (Art. 45.019(f), C.C.P.)

c. Call the venire (jury panel). (Art. 35.20, C.C.P.)

d. Challenge the array. (Arts. 35.06, 35.07, C.C.P.)

   i. When challenge is sustained. (Art. 35.08, C.C.P.)

   ii. List of new venire. (Art. 35.09, C.C.P.)

e. Shuffle the jury - The clerk shall randomly select the jurors by a computer or other process of random selection and shall write or print the names in the order selected on the jury list. The clerk shall deliver a copy of the list to both the prosecutor and the defendant or the defendant's attorney. (Art. 35.11, C.C.P.)

f. Oath to jury panel. (Art. 35.02, C.C.P.)

g. Juror excuses and claiming exemptions. (Arts. 35.03, 35.04, C.C.P.)

h. Court to try qualifications. (Arts. 35.10, 35.12, C.C.P.)

i. Examine jurors (voir dire) and challenge for cause. (Arts. 35.16 - 35.19, C.C.P.)

j. Peremptory challenges. (Art. 45.029, C.C.P.)

k. Jurors.

   i. If from challenges or any other cause, a sufficient number of jurors are not in attendance, the judge shall order the proper officer to summon a sufficient number of qualified persons to form the jury (commonly called a pick-up jury). (Art. 45.028, C.C.P.)

   ii. Six jurors. (Art. 45.027, C.C.P.)

   iii. Oath to jury. (Art. 45.030, C.C.P.)

   The oath is in accordance with Chapter 35, C.C.P. (Art. 45.030, C.C.P.) See Art. 35.22, C.C.P., for oath.

l. Arraignment.

i. Identify defendant. (Art. 26.02, C.C.P.)

ii. Defendant's plea. (Arts. 26.02 and 45.023, C.C.P.)

- Pleading may be oral or in writing as the court may direct. (Art. 45.021, C.C.P.)
- If defendant refuses to plea, the judge shall enter a plea of not guilty. (Art. 45.024, C.C.P.)

iii. The clerk is prohibited, and thereby presumptively the court, from requiring the presence of the defendant in order to accept a waiver of arraignment from an attorney representing the defendant. (Art. 26.011, C.C.P.)

m. Order of trial. (Art. 36.01, C.C.P.)

n. Testimony. (Arts. 36.02 - 36.06, C.C.P.)

o. Exclusion of witness - Motion to Invoke Rule. (Rule 614, Texas Rules of Evidence) Article 36.06, C.C.P., which exempts victims, family members of murder victims, and guardians of victims from "The Rule" provides for the exclusion of witnesses from the courtroom during the testimony of other witnesses. It allows exclusion of victims only if the victim will testify and the court finds that the victim's presence would materially affect his or her testimony. The burden of proving this fact is on the party asking to exclude victims, family members of murder victims, and guardians of victims.

p. Charge to the jury. (Art, 45.033, C.C.P.) - The judge shall charge the jury. The charge may be made orally or in writing, except that the charge shall be made in writing if required by law. (Art. 45.033, C.C.P.)

q. Order of argument. (Art. 45.020, C.C.P.) - Not more than one counsel shall conduct either the prosecution or defense. State's counsel may open and conclude the argument.

r. Directed verdict – If upon the trial of a case in justice or municipal court, the State fails to prove a *prima facie* case of the offense alleged in the complaint, the defendant is entitled to a directed verdict of "not guilty." (Art. 45.032, C.C.P.)

s. Jury kept together until agree on verdict, or discharged, or the court recesses. (Art. 45.034, C.C.P.) Judges are required to provide a sequestered a jury reasonable time to vote on election day. The court may provide the juror with transportation to and from the polling place. (Sec. 276.009, Elec. Code)

t. Verdict. (Art. 45.036 C.C.P.) – The judge shall see that the verdict is in proper form and shall render the proper judgment and sentence on the verdict.

u. Jury poll. (Art. 37.05, C.C.P.)

v. Judgment the judge may direct the defendant to pay. (Art. 45.041 C.C.P.):

- the entire fine and costs when sentence is pronounced;
- the entire fine and costs at some later date; or
- a specified portion of the fine and costs as designated intervals;
- if applicable, to make restitution to any victim of the offense in an amount not to exceed $500; and
- to satisfy any other sanction authorized by law. (Art. 45.041(b)(2) and (3), C.C.P.)

w. The verdict and the judgment must be entered in docket. (Art. 45.017, C.C.P.)

x. Jury compensation. (Sec. 61.001, G.C.) (Municipal courts are not required to pay jurors.)

y. Fee.

i. Jury fee. (Art. 102.004, C.C.P.) - A defendant in a justice or municipal court who requests a trial by jury shall pay a jury fee of $3 if the defendant is convicted of the offense. (Art. 102.004, C.C.P.)

ii. If a peace officer summoned the jury, upon conviction, the defendant is required to pay five dollars for the services of a peace officer. (Art. 102.011(7), C.C.P.)

iii. If a peace officer served subpoenas, upon conviction, the defendant is required to pay five dollars for the services of a peace officer. (Art. 102.011(3), C.C.P.)

iv. Cost for Officer's Overtime when Testifying. (Art. 102.011(i), C.C.P.) Defendants are required to pay the costs of overtime paid to a peace officer for time spent testifying in the trial of the case or for traveling to or from testifying in the trial of the case.

6. New trial. (Arts. 45.037, 45.038, 45.039, 45.040, C.C.P.) Motion for new trial must be made within one day after the rendition of judgment and sentence and not afterward. Not later than the 10th day after the date that the judgment is entered, a judge may for good cause shown, grant the defendant a new trial, whenever the judge considers that justice has not been done in the trial of the case. If a motion for new trial is not granted before the 11th day after the date that the judgment is entered, the motion shall be considered denied. Not more than one new trial shall be granted the defendant in the same case. When a new trial has been granted, the judge shall proceed, as soon as practicable, to try the case again. In no case shall the State be entitled to a new trial.

7. Mistrial - A jury shall be discharged if it fails to agree to a verdict after being kept together a reasonable time. If a jury is discharged because it fails to agree to a verdict, the judge may impanel another jury as soon as practicable to try such cause. (Art. 45.035, C.C.P.)

8. Appeal, if any. (Arts. 45.042, 45.0425, 45.0426, 45.043, C.C.P.)

9. Failure to appear for jury trial – A justice or municipal court may order a party who demands a jury trial in a justice or municipal court and who fails to appear for the trial to pay for the cost incurred for impaneling the jury. It appears from this particular section that a justice or municipal court could require a defendant or the State (*i.e.*, the city prosecutor) to pay the cost incurred for impaneling the jury. In addition, the justice or municipal court may release a party from the obligation to pay costs under this article for "good cause." The statute does not address whether or not a court should conduct some type of hearing to determine whether or not "good cause" is present. However, it would be prudent to have some type of hearing to determine whether or not there is "good cause" before releasing a particular party from the expenses provided for in this article. Also, this article provides that an order issued by a municipal or justice court may be enforced as contempt as prescribed by Section 21.002(c), G.C.

H. Non-jury Trial (Art. 45.025, C.C.P.)

1. Right to a jury trial. (Art. 1.05, C.C.P.)

2. Accused may waive a trial by jury in writing. If the defendant waives a trial by jury, the judge shall hear and determine the cause without a jury. (Art. 45.025, C.C.P.)

3. A complaint must be on file with the court unless the defense and prosecution have agreed to go to trial on the citation and filed the agreement with the court. (Art. 27.14(d), C.C.P.) If a defendant does not object to a defect, error, or irregularity of form or substance in a charging instrument (complaint) before the date on which the trial on the merits commences, the defendant waives and forfeits the right to object to the defect, error, or irregularity. Nothing in this article prohibits a trial court from requiring that an objection to a charging instrument be made at an earlier time. (Art. 45.019(f), C.C.P.)

4. Order of trial. (Art. 36.01, C.C.P.)

5. Testimony. (Arts. 36.02 - 36.06, C.C.P.)

6. Exclusion of witness - Motion to invoke Rule. (Rule 614, Texas Rules of Evidence)

7. Directed verdict – If upon the trial of a case in justice or municipal court, the State fails to prove a *prima facie* case of the offense alleged in the complaint, the defendant is entitled to a directed verdict of "not guilty." (Art. 45.032, C.C.P.)

8. Order of argument. (Art. 45.45.020(b), C.C.P.)
9. Judgment – The judge may direct the defendant to pay. (Art. 45.041 C.C.P.):
    - the entire fine and costs when sentence is pronounced;
    - the entire fine and costs at some later date; or
    - a specified portion of the fine and costs as designated intervals.

    The Judge may also:
    - if applicable, require restitution to any victim of the offense in an amount not to exceed $500; and
    - to satisfy other sanction authorized by law. (Art. 45.041(b)(2) and (3), C.C.P.)
10. Judgment entered in docket. (Art. 45.017, C.C.P.)
11. Cost for officer's overtime when testifying. (Art. 102.011(i), C.C.P.) Defendants are required to pay the costs of overtime paid to a peace officer for time spent testifying in the trial of the case or for traveling to or from testifying in the trial of the case.
12. New trial – (Arts. 45.037, 45.038, 45.039, 45.040, C.C.P.) Motion for new trial must be made within one day after the rendition of judgment and sentence and not afterward. Not later than the 10th day after the date that the judgment is entered, a judge may for good cause shown, grant the defendant a new trial, whenever the judge considers that justice has not been done in the trial of the case. If a motion for new trial is not granted before the 11th day after the date that the judgment is entered, the motion shall be considered denied. Not more than one new trial shall be granted the defendant in the same case. When a new trial has been granted, the judge shall proceed, as soon as practicable, to try the case again. In no case shall the State be entitled to a new trial.
13. Appeal, if any. (Arts. 45.042, 45.0425, 45.0426, 45.043, C.C.P.)

NON-CONTESTED PROCEEDINGS

A. Appearance in Person in Open Court (Art. 27.14(a), C.C.P.)

1. Adult defendants have right to appear by counsel. (Art. 45.020, C.C.P.); Minors (under age 17) must appear in open court in person with a parent or guardian. (Art. 45.0215, C.C.P.)
2. All pleading of the defendant may be oral or in writing as the court may direct. (Art. 45.021, C.C.P.)
3. Defendant's plea of guilty or nolo contendere. (Arts 27.14(a) and 45.023, C.C.P.)

4. Written waiver of jury trial required. (Art. 45.025, C.C.P.)
5. Presentation of evidence, if any.
6. Judgment – The judge may direct the defendant to pay. (Art. 45.041 C.C.P.):
    - the entire fine and costs when sentence is pronounced;
    - the entire fine and costs at some later date; or
    - a specified portion of the fine and costs as designated intervals.

    The Judge may also:
    - if applicable, to make restitution to any victim of the offense in an amount not to exceed $500; and
    - to satisfy any other sanction authorized by law. (Art. 45.041(b)(2) and (3), C.C.P.)
7. Judgment entered on docket. (Art. 45.017, C.C.P.)
8. Appeal, if any. (Arts. 45.042, 45.0425, 45.0426, 45.043, C.C.P.)

B. Delivery of Plea to the Court (Adult Defendants) (Art. 27.14(b), C.C.P.)

1. Plea of guilty or nolo contendere and written waiver of jury trial.
2. Clerk transmits plea and waiver to judge to accept.
3. Judgment – The judge may direct the defendant to pay. (Art. 45.041, C.C.P.):
    - the entire fine and costs when sentence is pronounced;
    - the entire fine and costs at some later date; or
    - a specified portion of the fine and costs as designated intervals.

    The Judge may also:
    - if applicable, require restitution to any victim of the offense in an amount not to exceed $500; and
    - to satisfy any other sanction authorized by law. (Art. 45.041(b)(2) and (3), C.C.P.)
4. Judgment entered on docket. (Art. 45.017, C.C.P.)
5. Court required to notify defendant of amount of fine and appeal bond the court will approve; notification may be in person. If notice is mailed, it must be certified and return receipt is required. (Art. 27.14(b), C.C.P.)
6. Defendant has up to 31 days after receiving the notice to either pay the fine or give the court an appeal bond in the amount stated in the notice. (Art. 27.14(b), C.C.P.)
7. Defendant may appeal. (Arts. 27.14(b) and 45.042, 45.0425, 45.0426, 45.043, C.C.P.)

C. Appearance by Mail (Art. 27.14(b), C.C.P.)

1. Plea and written waiver of jury trial required.
2. Court required to notify the defendant by certified mail return receipt requested of amount of fine and appeal bond.
3. Defendant has up to 31 days to pay or appeal from the time he or she received the certified notice from the court.
4. Judgment – the judge may direct the defendant to pay (Art. 45.041, C.C.P.):

    - the entire fine and costs when sentence is pronounced;
    - the entire fine and costs at some later date; or
    - a specified portion of the fine and costs as designated intervals.

    The Judge may also:

    - if applicable, require restitution to any victim of the offense in an amount not to exceed $500; and
    - to satisfy any other sanction authorized by law. (Art. 45.041(b)(2) and (3), C.C.P.)

5. Judgment entered in docket. (Art. 45.017, C.C.P.)
6. Defendant may appeal. (Arts. 27.14(b) and 45.042, 45.0425, 45.0426, 45.043, C.C.P.)

D. Payment of Fine (Art. 27.14(c), C.C.P.)

1. Payment of the fine constitutes a plea of no contest and a written waiver of a jury trial. The Judge enters a finding of guilty.
2. Court accepts fine payment.
3. Judge renders judgment. (Art. 45.041, C.C.P.)
4. Judgment entered in docket. (Art. 45.017, C.C.P.)

E. Out-of-County Fine-Only Offenses

A magistrate may take a written plea of guilty or nolo contendere, assess the fine, determine costs, give jail credit, accept payment, or determine indigence, and discharge the defendant where appropriate. The magistrate accepting a plea must forward the plea, order of the court, and any fine and costs collected to the original court within 10 business days. (Art. 15.18, C.C.P.)

SENTENCING AND PUNISHMENT

A. Fine and Costs (Art. 4.14, C.C.P.) (Sec. 12.23, P.C.)

B. Payment of Fine and Costs (Art. 45.041, C.C.P.)

1. Judgment – The judge may direct the defendant to pay (Art. 45.041 C.C.P.):

    - the entire fine and costs when sentence is pronounced;
    - the entire fine and costs at some later date [If any portion of fine and costs paid after 31st day after judgment, court must collect time payment fee of $25 (Sec. 51.921, G.C.)];
    - a specified portion of the fine and costs as designated intervals; [If any portion of fine and costs paid after 31st day after judgment, court must collect time payment fee of $25 (Sec. 51.921, G.C.)];
    - if applicable, to make restitution to any victim of the offense in an amount not to exceed $500; and
    - to satisfy any other sanction authorized by law. (Art. 45.041(b)(2) and (3), C.C.P.)

2. Jail time credit. (Arts. 45.041, 45.048 and 42.03, C.C.P.) In all criminal cases, the judge of the court in which a defendant is convicted shall give the defendant credit on his or her sentence for the time that the defendant has spent in jail from the time of his or her arrest and confinement until his or her sentence by the trial court. (Art. 42.03, Sec. 2(a), C.C.P.) Jail time credit is at the rate of not less than $100 for a period of time specified in the judgment. The period of time shall not be less than eight hours nor more than 24 hours. (Art. 45.048, C.C.P.) **On January 1, 2004, jail credit becomes a minimum rate of not less than $50 for the period of time specified in the judgment. (Art. 45.048, C.C.P.)(HB 2424 eff. 1/01/04)**

3. Payment by credit card, electronic means, or payment through the Internet. (Chpt. 132, L.G.C.) *Credit card* means a card, plate, or similar device used to make purchases on credit or to borrow money; *payment by electronic means* is defined as payment by telephone or computer but does not include payment in person or by mail. A municipality may provide collection of payment for fines, fees, court costs, or other charges through the Internet. The municipality may charge a reasonable fee. The municipality may contract with a vendor to perform the service.

    a. The governing body of a municipality may authorize a municipal official who collects fees, fines, court costs, or other charges: (1) accept payment by credit card of a fee, fine, court costs, or other charge; (2) collect a fee for processing the payment by credit card or electronic

means; or (3) may authorize the acceptance of payment by credit card without requiring collection of a fee.

b. Sec. 132.003, L.G.C., Processing Fee - The governing body of a municipality shall set the processing fee in an amount that is reasonably related to the expense incurred by the municipal official in processing the payment by credit card. However, the governing body may not set the processing fee in an amount that exceed five percent of the amount of the fee, fine, court cost, or other charge being paid.

c. Sec. 132.004, L.G.C., Service Charge - If, for any reason, a payment by credit card is not honored by the credit card company on which the funds are drawn, the county or municipality may collect a service charge from the person who owes the fee, fine, court costs, or other charge. The service charge is in addition to the original fee, fine, court cost, or other charge and is for the collection of that original amount. The amount of the service charge is the same amount as the fee charged for the collection of a check drawn on an account with insufficient funds.

4. Community Service (Arts. 43.09(m) and 45.049, C.C.P.)

a. Fines and costs imposed by municipal courts, regardless of whether the court is a court of record, may be discharged by performing community service and a community supervision and corrections department or a court-related services office may provide the administrative duties and other services necessary for the placement in programs. (Art. 43.09(m), C.C.P.)

b. Judge may require a defendant who fails to pay a previously assessed fine or costs or who is determined by the court to have insufficient resources or income to pay a fine or costs, to discharge all or part of the fine or costs by performing community service. (Art. 45.049, C.C.P.)

c. Defendant may discharge an obligation to perform community service by paying at any time the fine and costs assessed. (Art. 45.049, C.C.P.)

d. Judge is required to specify in an order requiring community service the number of hours the defendant is required to work. (Art. 45.049(b), C.C.P.)

e. The community service work must be for a governmental entity or a nonprofit organization that provides services to the general public that enhances social welfare and the general well-being of the community.

f. The governmental entity or nonprofit organization that accepts a defendant order to perform community service must agree to supervise the defendant in the performance of the defendant's work and report on the defendant's work to the judge.

g. Judge may not order more than 16 hours per week of community service unless the judge determines that requiring the defendant to work additional hours does not create a hardship on the defendant or the defendant's dependents.

h. A defendant is considered to have discharged $100 of fines or costs for each eight hours of community service performed. (Art. 45.049(e), C.C.P.) **On January 1, 2004, community service credit for every eight hours of service performed discharges not less than $50 of fine and costs. (HB 2424 eff. 1/01/04)**

i. Municipal judge, officer, or employee of city is not liable for damages arising from an act or failure to act in connection with manual labor performed by a defendant if the act or failure to act was:

- performed pursuant to court order; and
- not intentional, willfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

C. Minors

1. Alcoholic Beverage Code Offenses (Chpt. 106, A.B.C.); minors – persons under the age of 21.

   a. Offenses: Purchase of Alcohol by a Minor Attempt to Purchase Alcohol by a Minor, Consumption of Alcohol by a Minor, Driving under the Influence of Alcohol by a Minor, Misrepresentation of Age by a Minor, or Possession of Alcohol by a Minor.

   b. Alcohol Awareness Course.

      i. When a court convicts a minor who has not been previously convicted of one of the following offenses: Purchase of Alcohol by a Minor Attempt to Purchase Alcohol by a Minor, Consumption of Alcohol by a Minor, Driving under the Influence of Alcohol by a Minor, Misrepresentation of Age by a Minor, or Possession of Alcohol by a Minor, the court is required to make that defendant attend an alcohol awareness course. If the defendant has been previously convicted of one or more of the above listed offenses, the court may require the defendant to attend an alcohol awareness course. (Sec. 106.115(a), A.B.C)

      ii. If the defendant is younger than 18 years of age, the court may require the parent or guardian of the defendant to attend the course with the defendant. (Sec. 106.115(a), A.B.C.)

      iii. When requested, an alcohol awareness course may be taught in languages other than English.

iv. The court shall require the defendant to present to the court, within 90 days of the date of final conviction, evidence in the form prescribed by the court that the defendant has satisfactorily completed the course.

v. If the defendant presents the required evidence within the prescribed period, the court may reduce the assessed fine to an amount equal to no less than one-half of the amount of the initial fine.

vi. If the defendant does not present the required evidence within the prescribed period, the court:

- Shall order the Department of Public Safety to suspend the defendant's driver's license or permit for a period not to exceed six months or, if the defendant does not have a license or permit, to deny the issuance of a license or permit to the defendant for that period; and
- May order the defendant or the parent, managing conservator, or guardian of the defendant to do any act or refrain from doing any act if the court determines that doing the act or refraining from doing the act will increase the likelihood that the defendant will present evidence to the court that the defendant has satisfactorily completed an alcohol awareness program or performed the required hours of community service. (Sec. 106.115 (d)(2), A.B.C.)

vii. When a defendant fails to present the court with required evidence of alcohol awareness course completion, the court may upon good cause shown extend the period by not more than 90 days. (Sec. 106.115(c), A.B.C.)

c. The court is required to order community service upon conviction of or when a minor is placed on deferred disposition for the offenses of *purchase, attempt to purchase, consumption, possession of alcohol by a minor,* and *misrepresentation of age by a minor.* If a minor has not been previously convicted, the minor must perform between eight and 12 hours community service. If the minor has been previously convicted, the minor must perform between 20 and 40 hours community service. Community service must be related to the education about or prevention of misuse of alcohol if programs or services providing that education are available in the community in which the court is located. If programs or services providing that education are not available, the court may order community service that it considers appropriate for rehabilitative purposes. (Sec. 106.071(d), A.B.C.)

d. Upon conviction of the following offenses: *purchase, attempt to purchase, consumption, possession of alcohol by a minor,* and

misrepresentation of age by a minor, the court is required to order the Department of Public Safety to suspend or deny issuance of the minor's driver's license. For the first conviction, the suspension is for 30 days. For the second conviction, the suspension is for 60 days; for the third or subsequent convictions, the suspension is for 180 days. (Art. 106.071(d)(2), A.B.C.)

e. Fine for fine-only Alcoholic Beverage Code Offenses – Class C misdemeanor. ($500 maximum fine) (Sec. 106.071(b), A.B.C.) See Sec. 106.041, A.B.C., for fine for DUI – Class C misdemeanor.

f. If a person is a minor over the age of 17 who has been previously convicted at least twice of one of the following offenses: purchase, attempt to purchase, consumption, possession of alcohol by a minor, misrepresentation of age by a minor, or driving under the influence of alcohol by minor, the punishment is a fine of not less than $250 or more than $2000 and/or confinement in jail for a term not to exceed 180 days. Municipal court does not have jurisdiction over this defendant. (Art. 106.071, A.B.C)

g. Driving Under the Influence of Alcohol by Minor; Class C misdemeanor – Maximum fine is $500. (Sec. 106.041, A.B.C.)

   i. Upon conviction, the court is required to order the defendant to perform between 20 and 40 hours of community service if the minor has not been previously convicted of this offense. If the minor has been previously convicted, the minor must perform between 40 and 60 hours of community service. The community service must be related to education about or prevention of misuse of alcohol. (Sec. 106.041(d), A.B.C.)

   ii. When a minor has been previously convicted at least twice of the offense of DUI, the penalty for DUI is a fine of not less than $500 or more than $2000 and/or confinement in jail for a term not to exceed 180 days. (Note: Municipal court does not have jurisdiction over these offenses.) (Sec. 106.041(c), A.B.C.)

   iii. A minor who commits an offense under this section and who has been previously convicted twice or more of this offense is not eligible for deferred disposition. (Sec. 106.041(f), A.B.C.)

h. A minor who has been previously convicted twice or more of any Alcoholic Beverage Code offense is not eligible for deferred disposition.

i. Any person convicted of not more than one violation of the Alcoholic Beverage Code while a minor, on attaining the age of 21 years, may apply to the court in which he or she was convicted to have the conviction expunged. (Sec. 106.12, A.B.C.)

2. Tobacco Offenses (Subchapter N, H.S.C.)

a. Tobacco offenses by minors (younger than 18 years of age): possession, purchase, consumption, receipt of cigarettes or tobacco products by minors, or falsely representing himself or herself to be 18 years of age by displaying fraudulent proof of age to obtain possession of, purchase or receive a cigarette or tobacco product. (Sec. 161.252, H.S.C.)

b. It is an exception if the minor is in the presence of an adult parent, guardian, or spouse, or an employer of the minor whose possession or receipt of the tobacco product is required in the performance of the employee's duties as an employee. (Sec. 161.252(b), H.S.C.)

c. Upon conviction, the court is required to suspend execution of the fine and shall required the minor to attend a tobacco awareness program approved by the Health and Human Services Commission. (Sec. 161.253(a), H.S.C.)

   i. The defendant must show satisfactory completion of the course not later than the 90th day after the date of conviction. (Sec. 161.253(e), H.S.C.)

   ii. If the defendant does not provide evidence of successful completion of a tobacco awareness course, the court shall order the Department of Public Safety to suspend or deny issuance of driver's license or permit for a period not the exceed 180 days after the date of the order. (Sec. 161.254, H.S.C.)

   iii. The court on receipt of the evidence of successful completion of the tobacco awareness course must discharge the defendant and dismiss the complaint. (If a defendant is subsequently convicted of a tobacco offense, the first offense that was dismissed is considered to be a conviction.) If the defendant has been previously convicted of a tobacco offense, the court may reduce the fine imposed to not less than half the fine previously imposed by the court. (Sec. 161.253(f) and (g), H.S.C.)

d. A minor convicted of a tobacco offense may apply to the court to have the conviction expunged. If the court finds that the individual satisfactorily completed the tobacco awareness program or tobacco-related community service ordered by the court, the court shall order the conviction and any complaint, verdict, sentence, or other document relating to the offenses to be expunged from the individuals record and the conviction may not be shown or made known for any purpose. (Sec. 161.255, H.S.C.)

e. Title 3 of the Family Code does not apply to a proceeding under this subchapter. (Sec. 161.257, H.S.C.)

D. Juveniles – Sealing Records (Chpt. 58, C.C.P., and Sec. 58.003, F.C.)

Chapter 58, C.C.P., which required the criminal courts to seal juvenile non-traffic records in the same manner as the juvenile court under Sec. 58.003, F.C., was repealed by the 77th Legislature. Non-traffic offenses committed by juveniles before September 1, 2001 may still be sealed under Section 58.003, F.C. See that section in the Family Code for procedures. (HB 1118; eff. 9/1/01; applies only to conduct that occurs on or after the effective date of the Act.)

E. Default in Payments

1. Judge may issue a capias pro fine to have the defendant brought before the court when a defendant fails to satisfy the judgment according to its terms. (Art. 45.045, C.C.P.) The requisites are:

    - It shall state the amount of the judgment and sentence;
    - It shall command the appropriate officer to bring the defendant before the court; or
    - Place the defendant in jail until he or she can be brought before the court.

1. When capias pro fine may be issued - If a defendant is not in custody when the judgment is rendered or if the defendant fails to satisfy the judgment according to its terms.
2. The court in which the case was tried has the authority to issue the capias.
3. When a judgment and sentence have been entered against a defendant and the defendant defaults in the discharge of the judgment, the judge may order the defendant confined in jail until discharged by law if the judge determines that the defendant intentionally failed to make a good faith effort to discharge the judgment, or the defendant is not indigent. A certified copy of the judgment, sentence, and order is sufficient to authorize such confinement. (Art. 45.046, C.C.P.)
4. If after a judgment and sentence is entered the defendant defaults in payment of a fine, the justice or judge may order the fine and costs collected by execution against the defendant's property in the same manner as a judgment in a civil suit. (Art. 45.047, C.C.P.)
5. The court has the duty to inquire into reasons for non-payment to avoid jailing indigents who are unable to pay. [*Doe v. Angelina County*, 733 F.Supp. 245(E.D. Tex. 1990)]
6. A defendant placed in jail on account of failure to pay the fine and costs *shall* be discharged on habeas corpus by showing that the defendant:

    - Is too poor to pay the fine and costs; or

- Has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of not less than $100 for a period of time specified in the judgment. The period of time shall not be less than eight hours or more than 24 hours. (Art. 45.048, C.C.P.) **On January 1, 2004, jail credit will become not less than $50 for every period of time specified in the judgment. (HB 2424 eff. 1/1/04)**

7. After a defendant defaults in payment of fine and/or costs, if the court determines that the defendant is indigent and that performing community service would cause an undue hardship, the court may waive the fine and costs. (Art. 43.091, C.C.P.) **(Indigent means an individual who earns not more than 125 percent of the income standard established by applicable federal poverty guidelines.) (Sec. 133.002, Tax Code) (HB 2424 eff. 1/1/04)**

8. Juveniles

   a. Failure to pay fine; contempt: juveniles (Art. 45.050, C.C.P.)

      i. A child means a person who is at least 10 years of age and younger than 17 years of age and charged with or convicted of an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.12, C.C.P. (Art. 45.058, C.C.P.)

      ii. The court may not order confinement of a child for failure to pay all or any part of a fine or costs or for contempt of another order.

      iii. If a child fails to obey an order of the court under circumstances that would constitute contempt of court, the court can refer the child to the juvenile court for delinquent conduct for contempt of the court order; or the court may retain jurisdiction of the case and hold the child in contempt and impose a fine not to exceed $500; or order the Department of Public Safety to suspend or deny issuance of the child's driver's license or permit.

   b. A capias pro fine may not be issued for an individual convicted for an offense committed before the individual's 17th birthday unless:

      - **The individual is 17 years of age or older;**
      - **The court finds that the issuance of the capias pro fine is justified after considering;**
        - **The sophistication and maturity of the individual;**
        - **The criminal record and history of the individual; and**
        - **The reasonable likelihood of bringing about the discharge of the judgment through the use of procedures and services currently available to the court; and**

- **The court has proceeded under Article 45.050 to compel the individual to discharge the judgment. (Article 45.045, C.C.P.) (HB 2319 eff. 9/1/03)**

c. Special Programs for Non-traffic Offenses (Art. 45.057, C.C.P.)

i. On a finding that a child committed a fine-only offense, the court has the jurisdiction to enter an order requiring that the child attend a special program that the court determines to be in the best interest of the child and if the program involves the expenditure of county funds, that is approved by the county commissioners court, including a rehabilitation, counseling, self-esteem, and leadership, work and job skill training, job interviewing and work preparation, self-improvement, parenting, manners, violence avoidance, tutoring, sensitivity, training, parental responsibility, community service, restitution, advocacy, or mentoring program.

ii. If the court finds that the parent, managing conservator, or guardian, by act or omission, contributed to, caused, or encouraged the child's conduct, the court can require that the parent, managing conservator, guardian do any act or refrain from doing any act that the court determines will increase the likelihood that the child will comply with the orders of the court, including attend a parenting class or parental responsibility program; and attend the child's school classes or functions.

iii. The court may order the parent, managing conservator, or guardian of a child required to attend a special program to pay an amount not greater than $100 to pay for the costs of the program.

d. Failure to Attend School Proceedings (Art. 45.054, C.C.P.)

i. On a finding that an individual committed the offense of failure to attend school, the court may require the individual to:

- attend school without unexcused absences;
- attend a preparatory class for a GED examination if the court determines that the individual is too old to do well in a formal classroom environment, or if the individual is at least 16 years of age, take the GED examination;
- attend an alcohol and drug abuse program, a rehabilitation program, a counseling program (including self-improvement counseling, a work and job skills training program, a program that provides training in parenting (including parenting responsibility), a program that provides training in violence avoidance, a program that provides sensitivity training, and a program that provides training in advocacy and mentoring;
- reasonable community service; and

- participate in a tutorial program.

ii. The court may require the individual and the individual's parents to attend a class for students at risk of dropping out of school.

9. Contracts with DPS for denial of renewal of license for Failure to Appear. (Chpt. 706, T.C.) **(Statute amended by HB 2424, eff. 1/1/04)**

   a. A city may contract with the Department of Public Safety to provide information necessary for the Department to deny renewal of the driver's license of a person who has failed to appear for a complaint or citation, or fails to pay or satisfy a judgment ordering payment of a fine and cost in the manner order by the court in a matter involving fine-only offenses that municipal court has jurisdiction to hear. (Sec. 706.002(a), T.C.)

   b. If a city has contracted with the Department under this statute, a peace officer who is authorized to issue citations in the jurisdiction of the city shall issue a written warning to each person to whom the officer issues a citation for a violation of a traffic law. The warning is in addition to any other warning required by law. The warning must state in substance that if the person fails to appear in court as provided by law for the prosecution of the offense, or if the person fails to pay or satisfy a judgment ordering the payment of a fine and cost in the manner order by the court, the person may be denied renewal of the person's driver's license. The written warning may be printed on the same instrument as the citation.

   c. Administrative Fee – $30 paid by the defendant; $20 of this fee is remitted the State; the city retains $10. Upon payment of the fee and when one of the following occurs, the court must notify DPS to remove the cause for denial of license renewal:

      - Perfection of an appeal of the case for which the warrant of arrest was issued or judgment arose;
      - Dismissal of the charge for which the warrant of arrest was issued or judgment arose;
      - Posting of a bond or the giving of other security to reinstate the charge for which the warrant was issued;
      - Payment or discharge of the fine and cost owed on an outstanding judgment of the court; or
      - Other suitable arrangement to pay the fine and cost within the court's discretion.

   d. A person who is acquitted of the charge on which the person failed to appear; or the submission was sent to DPS in error; or the records have been destroyed in accordance with the political subdivision's records retention policy does not have to pay the administrative fee and DPS cannot continue to deny driver's license renewal.

10. Contract with private attorney or a private or public vendor (Art. 103.0031, C.C.P.) **(amended by SB 782; eff. 6/18/04)**

    a. The city may contract with a private attorney or a private or public vendor for collection services for:

        - **Debts owed (cases with judgments);**
        - **Forfeited bonds (Bonds filed by commercial bail bondsmen may not be included in a contract for collection services. Only personal bonds and surety bonds not filed by a commercial bail bondsmen may be included in the collection contract.);**
        - **Fines and fees assessed by a hearings officer for administrative parking citations; and**
        - **Amounts in cases in which the accused failed to appear in compliance with a lawful summons; a lawful order of the court; or as specified in a citation, summons, or other notice for administrative parking.**

    b. The judgment and failure to appear must be at least 60 days old.

    c. The defendant is liable for 30 percent collection fee. The fee does not apply if a case is dismissed or to any part of the fine or cost which a defendant discharged by jail credit or community service. If the defendant, however, makes any partial payment, the court must calculate the amount of the collection fee due. The allocation to the Comptroller, the city, and the private attorney or vendor must be reduced proportionately.

    d. For cases that are not adjudicated, the amount of the collection fee is based upon the amount to be paid that is communicated to the accused as acceptable to the court under its standard policy for resolution of the case, if the accused voluntarily agrees to pay that amount. If a defendant does not agree to that amount, the 30 percent is based upon the amount ordered paid by the court after plea or trial. Vendors and attorneys sending a communication to the accused person regarding the amount of payment that is acceptable to the court under the court's standard policy for resolution of a case, must include a notice of the person's right to enter a plea or go to trial on any offense charged.

    e. Cities may enter into a contract to collect a debt incurred on an offense that was committed before June 18, 2003. The collection fee, however, does not apply to the debt and cannot be collected from a defendant. Therefore, on new contracts entered into after June 18, 2003, the 30 percent collection fee cannot be collected on debts incurred on offenses that were committed before that date. Arguably, under contracts entered into under the old law for uncollected debts, the collection fee could still be collected.

Cities may enter into a contract to collect an amount incurred as a result of the commission of a criminal or civil offense committed before, on, or after June 18, 2003. The collection fee, however, does not apply to an amount incurred on cases in which a defendant failed to appear if the offense was committed before June 18, 2003. Hence, for both types of cases, those in which debts are owed (judgments entered) and those in which suggested amounts are owed (defendants failed to appear) that occurred before June 18, 2003, a city may contract for collection services, but may not include in the contract the 30 percent collection fee.

F. Remedying Defects

1. Expired Driver's License (Sec. 521.026, T.C.)
   a. Judge's discretion to dismiss.
   b. Defendant must remedy defect within 10 working days.
   c. Judge may assess an administrative fee not to exceed $10.
2. Invalid Inspection Certificate (Sec. 548.605, T.C.)
   a. Judge shall dismiss the inspection certificate charge if the inspection certificate has not been expired for more than 60 days and shall assess a $10 fee if the defendant obtains current inspection certificate within 10 working days. "Working day" means any day other than a Saturday, a Sunday, or a holiday when county offices are closed. (Art. 45.003, C.C.P., also defines working day as a day that does not include Saturday, Sunday, or a legal holiday.)
   b. A judge may dismiss a charge of driving with an expired inspection certificate that has been expired for more than 60 days, but there is no provision to assess a fee.
3. Expired Motor Vehicle Registration. (Sec. 502.407(b), T.C.)
   a. Judge's discretion to dismiss.
   b. Defendant must remedy defect within 10 working days. Working day is defined as a day that does not include Saturday, Sunday, or a legal holiday. (Art. 45.003, C.C.P.)
   c. Judge may assess an administrative fee not to exceed $10.
   d. Court required to determine that any delinquency due county tax collector/assessor for late registration is paid to the county tax collector/assessor before dismissing charge.

G. Restitution

1. A judge may direct a defendant to make restitution to any victim of the offense in an amount not to exceed $500 as part of the municipal court judgment. (Art. 45.041(b)(2), C.C.P.)
2. A judge may, as a term of deferred disposition (Art. 45.051, C.C.P.), require restitution be made to a victim. The amount of the restitution may not exceed the amount of fine assessed, but not imposed. (Art. 45.051, C.C.P.)
3. The court may order restitution for the offense of *Issuance of Bad Check.* (Sec. 32.41(e), C.C.P.)

H. Deferred Disposition (Art. 45.051, C.C.P.)

1. Applies to fine-only misdemeanors, except:
   - Traffic offenses committed in construction or maintenance work zones;
   - The offenses of *Consumption of Alcohol by a Minor* (Secs. 106.04(d) and 106.071(i), A.B.C.); *Purchase of Alcohol by a Minor, Attempt to Purchase Alcohol by a Minor, Possession of Alcohol by a Minor, Misrepresentation of Age by a Minor* (Sec. 106.071(i), A.B.C.) when the defendant has two previous convictions under Section 106.071; and *Driving Under the Influence* (Sec. 106.041(f), A.B.C.) when the defendant has two previous convictions under Section 106.041; and
   - **Traffic offenses committed by a person with a commercial driver's license. (SB 631 eff. 9/1/03)**
2. On a plea of guilty or nolo contendere or on a finding of guilt, and payment of court costs, the judge may defer further proceedings without entering an adjudication of guilt and place the defendant on probation. **An appearance under Art. 45.051, C.C.P., terminates any liability on a bond. (SB 631 eff. 9/1/03)**
3. Time limit - Not to exceed 180 days.
4. Requirements - Judge may require the following:
   - Post bond in the amount of the fine assessed to secure payment of the fine;
   - Pay restitution to the victim of the offense in an amount not to exceed the fine assessed;
   - Submit to professional counseling;
   - Submit to diagnostic testing for alcohol or a controlled substance or drug;
   - Submit to a psychosocial assessment;

- Participate in an alcohol or drug abuse treatment or education program;
- Pay the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs;
- **A driving safety course approved by the Texas Education Agency, or one approved by the court;**
- **Submit proof of compliance with the courts conditions on deferred; (SB 631 eff. 9/1/03)** and
- Comply with any other reasonable condition.

5. Satisfactory completion – Judge shall dismiss and note in docket that complaint is dismissed.
6. Optional Special Expense Fee – Not to exceed the amount of fine may be collected at the end of the deferral period after the complaint is dismissed.
7. Reporting to the Department of Public Safety:
   - Traffic cases: the court does not report the deferral to DPS, but if the defendant failed to complete the terms of the deferral and the court enters a final judgment and imposes the fine, the court would report the conviction. (Sec. 543.204, T.C.)
   - If the offense is an Alcoholic Beverage Code offense, the court is required to report to DPS the order of deferral. If the defendant fails to complete the terms of the deferral, the court would report a conviction. (Sec. 106.117(3), A.B.C.)
8. Failure to comply with terms of probation.
   a. Judge proceeds to adjudication of guilt;
   b. Judge may impose fine;
   c. Judge may reduce fine previously assessed;
   d. If defendant not in custody, may issue capias pro fine;
   e. If traffic case, report conviction to DPS;
   f. Appeal - Defendant may appeal final conviction.
9. Records relating to a complaint dismissed, may be expunged under Art. 55.01, C.C.P.

I. Driving Safety Courses/Motorcycle Operator Course (Art. 45.0511, C.C.P.)

1. **Applies to a offenses involving the operation of a motor vehicle and is defined by Section 472.022, T.C. (Obeying Warning Signs); Subtitle C, T.C. (Rules of the Road); and Section 729.001(3), T.C. (Operation of a Motor Vehicle by a Minor). (SB 631 eff. 9/1/03)**

2. Exceptions to the right to take a driving safety course:

   - Traffic offenses committed in a construction maintenance work zone. (Secs. 543.117 and 472.022, T.C.);
   - A violation of Section 545.066, T.C. (Passing a stopped school bus loading or unloading children);
   - A violation of Section 550.022, T.C. (Accident involving damage to a vehicle and leaving the scene of the accident punishable as a Class B misdemeanor);
   - A violation of Section 550.023, T.C. (Failure to stop and give information and render aid punishable as a Class B misdemeanor);
   - A serious traffic violation;
   - Speeding 25 mph or more over the limit; and
   - **A person with a commercial driver's license who commits any traffic offense even in his or her personal vehicle. (SB 631 eff. 9/1/03)**

3. Only Texas Education Agency approved driving safety courses or Texas Department of Public Safety approved motorcycle operator training courses are acceptable.

4. If the person is charged with not wearing a seatbelt or transporting a child not in a passenger safety seat system or not wearing a seatbelt depending on the age, the court must require a driving safety course that includes four hours of instruction that encourages the use of child passenger safety seat systems and the wearing of seat belts and emphasizes the effectiveness of child passenger safety seat system and seatbelts in reducing the harm to children being transported in motor vehicle. (Secs. 545.412 and 545.413, T.C.)

5. The defendant elects to take a driving safety course and enters a plea of guilty or no contest in person or in writing on or before the answer date on the notice to appear.

6. Court costs are required to be paid when the driving safety course or motorcycle operator training course is granted.

7. Under the mandatory provisions, the judge shall require a defendant to take a driving safety course if the defendant has not completed an approved driving safety course or motorcycle operator training course, as appropriate, within the 12 months preceding the current offense if the defendant meets the following requirements:

   - **Enters a plea in person or in writing of no contest or guilty and before the answer date on the notice to appear present in person to the court an or written request to take a course or sent to the court by certified mail, return receipt requested, postmarked on or before the answer date on the notice to**

appear, a written request to take a course. (Note: Remember the new mailbox rule in new Article 45.013, C.C.P.)

- **Shows proof of a Texas driver's license or permit.**
- **Provides evidence of financial responsibility as required by Chapter 601, T.C. (SB 631 eff. 9/1/03)**

a. The court enters judgment on the person's plea of no contest or guilty at the time the plea is made but defers imposition of the judgment for **90 days. (SB 631 eff. 9/1/03)**

b. A non-refundable fee of $10 may be assessed.

c. **At the end of the 90 days, the defendant must present a uniform certificate of course completion for a driving safety course or a verification of course completion for a motorcycle operator course. The defendant must also present the court with a copy of his or her driving record as maintained by the Texas Department of Public Safety showing that he or she had not taken a driving safety course in the 12 month preceding the current offense, and an affidavit that his or she was not taking a course with requesting a course or the current offense nor had he or she taken a course in the 12 month preceding the current offense that is not on his or her driving record. (SB 631 eff. 9/1/03)**

d. If the defendant presents all the required evidence, the court shall remove the judgment and dismiss the charge and report the date of completion to the Department of Public Safety.

e. If a defendant fails to furnish all the required evidence, the court shall notify the person in writing, mailed to the address appearing on the notice to appear, of that failure and require the person to appear at the time and place stated in the notice to show cause why the evidence was not timely submitted to the court. On a person's showing of good cause for failure to furnish evidence to the court, the court may allow an extension of time for the person to present a uniform certificate of course completion. If person fails to appear at the show cause hearing, a capias pro fine may be issued for the charged for which the defendant requested to take a driving safety course.

8. When a defendant charged with a traffic offense has completed an approved course within the 12 months preceding the current offense, the judge may allow a defendant to take a driving safety course.

a. **When a judge grants the driving safety course, the judge defers proceedings for 90 days to take the driving safety course; and may require a non-refundable fee not to exceed the maximum amount of the fine. (SB 631 eff. 9/1/03)**

b. If the defendant complies and presents proof of taking the driving safety course, the court dismisses the charge.

c. The court reports the date of completion to the Department of Public Safety.

d. If a defendant fails to furnish evidence of the successful completion of the course, the court shall notify the person in writing, mailed to the address appearing on the notice to appear, of that failure and require the person to appear at the time and place stated in the notice to show cause why the evidence was not timely submitted to the court. On a person's showing of good cause for failure to furnish evidence to the court, the court may allow an extension of time for the person to present a uniform certificate of course completion. A capias pro fine may be issued for the charged for which the defendant requested to take a driving safety course.

J. Deferral – Chemically Dependent Person (Art. 45.053, C.C.P.)

1. State court costs are required to be collected.
2. After plea of guilty or nolo contendere or a finding of guilty on an offense resulting from or is related to the defendant's chemical dependency and if an application for court ordered treatment is filed in accordance with Chapter 462, H.S.C., the court may defer further proceedings for 90 days without entering an adjudication of guilt.
3. Satisfactory evidence presented at the end of the deferral period - evidence that defendant was committed for and completed court-ordered treatment in accordance with Chapter 462, H.S.C.
4. If satisfactory evidence presented, judge shall dismiss.
5. If evidence not satisfactory, the court may impose fine assessed or impose a lesser fine.
6. Docket entries should reflect:
   a. The date the judge ordered the sentence to be suspended and the disposition deferred;
   b. The deferral period;
   c. The court costs paid;
   d. The fine assessed (although not yet imposed);
   e. Whether there was a plea of guilty or nolo contendere, or whether there was a finding of guilt after a trial; and
   f. Final disposition of the case.
7. No expense fee may be collected.
8. Records relating to a complaint dismissed, may be expunged under Art. 55.01, C.C.P.

K. Teen Court (Art. 45.052, C.C.P.)

1. Eligibility:
   a. Under 18; or
   b. Enrolled full-time in school leading to a high school diploma;
   c. Pleads guilty or no contest in open court with his or her parent, guardian, or managing conservator present;
   d. Requests teen court program;
   e. Has not successfully completed a teen court program within two years preceding the date of the offense charged; and
   f. Defendant is charged with an offense that the court has jurisdiction of under Article 4.14, C.C.P. (Art. 45.052, C.C.P.)
2. Time limit – The court may defer proceedings for not more than 180 days. The defendant shall complete the teen court program not later than the 90th day after the date the teen court hearing to determine punishment is held or the last day of the deferral period whichever date is earlier. (Art. 45.052(a) and (c), C.C.P.) (HB 822; eff. 9/1/01)
3. Fee:
   a. A non-refundable administrative fee of up to $10 may be assessed. (Art. 45.052(e), C.C.P.)
   b. A non-refundable fee of $10 may be assessed to cover the costs of the teen court performing its duties. Fee paid to the teen court. (Art. 45.052(g), C.C.P.)
   c. Court may exempt defendant from paying fees. (Art. 45.052(h), C.C.P.)
4. Court Costs:
   a. Court costs are required to be paid when defendant requests teen court. (Note: exception arrest fee is not collected); (Information found in each separate court cost statute.)
   b. Court may exempt defendant from paying court costs. (Art. 45.052(h), C.C.P.)
5. Transfer - Case may be transferred to a court in another county as long as the court to which the case is transferred consents to the transfer and the case is one that falls within the court's jurisdiction. (Art. 45.052(f), C.C.P.)
6. Completion:
   a. Court must dismiss the charge.
   b. If charge is traffic violation, court reports to DPS completion and completion date of the teen court program.

APPEALS (Arts. 45.042, 45.0425, 45.0426, 45.043, 44.281, C.C.P.)

A. Right to Appeal (Art. 44.02, C.C.P.)

B. Appeal to County Court

Appeals heard in county court except in cases where the county court has not jurisdiction, in which counties such appeals shall be heard by the proper court. (Art. 45.042, C.C.P.)

C. Appeal Bonds (Art. 45.0425, C.C.P.)

1. Appeal bond may be surety, cash, or personal bond.
    - Cash bail bond - Signed by the defendant and accompanied by money order or cashier's check made payable to appellate court for the amount of bail. Court cannot require cash, but defendant may post this type of bond.
    - Surety bail bond - Signed by defendant and at least one surety.
    - Personal bond - Signed by defendant (bond is discretionary with the court).
2. Amount of bond - If the court takes bail, the bond is not less than two times the amount of fine and court costs, but in any case not less than $50.
3. When an appeal is by filing a bond within the time prescribed by law in such cases, and the court to which appeal is taken determines that such bond is defective in form or substance, such appellate court may allow the appellant to amend such bond by filing a new bond, on such terms as the court may prescribe. (Art. 44.15, C.C.P.)

D. Filing Appeal Bonds Perfects Appeal (Art. 45.0426, C.C.P.)

When an appeal bond is filed not later than 10 days from the date of judgment, the appeal is perfected. If the appeal bond is not timely filed, the appellate court does not have jurisdiction over the appeal and shall remand the case to the justice or municipal court for execution of sentence. No appeal shall be dismissed because the defendant failed to give notice of appeal in open court. An appeal by the defendant or the State may not be dismissed on the account of any defect in the transcript. (Remember Mailbox Rule - Art. 45.013, C.C.P.)

E. Time Limit for Giving Appeal Bond (Art. 45.0426 and 27.14(b), C.C.P.)

Appeal bond is to be filed within 10 days if defendant appears in person in court; before the 31st day after receiving notice by certified mail or in person if defendant appeared by mail or delivered plea to court. [*Whisitt v. Ramsay*, 719

S.W.2d 333 (Tex. Crim. App. 1986)] (Remember Mailbox Rule - Art. 45.013, C.C.P.)

F. Preparation of Bond

Court does not prepare bond; usually prepared by defendant's attorney or commercial bail bondsman.

G. Trial in Appellate Court (Art. 45.042, C.C.P.)

1. From courts of non-record, trial is de novo.
2. From courts of records, appeal in appellate court is on transcript.

H. Original Papers Sent Up (Art. 44.18, C.C.P.)

All original papers with the appeal bond are sent with the transcript and shall be delivered without delay to the appellate court.

I. Effect of Appeal (Art. 45.043, C.C.P.)

All further proceedings in municipal court cease.

J. Disposition of Fines and Costs when Misdemeanor Affirmed (Art. 44.281, C.C.P.)

In misdemeanor cases affirmed on appeal from a municipal court, the fine imposed on appeal and the costs imposed on appeal shall be collected from the defendant, and the fine of the municipal court when collected shall be paid into the municipal treasury. This applies to courts of records. There is no provision for the county court to return a collected fine on a conviction for a case appealed from a non-record municipal court.

K. Effect of Payment of Fine

If defendant pays fine, he or she loses right to appeal. [*Fouke v. State*, 529 S.W.2d 772 (Tex. Crim. App. 1975), cert. denied, 425 U.S. 974 (1976)] Under circumstances in which a plea or payment of fine and costs are induced involuntarily and under duress, the circumstances of duress constitutes nonwaiver of right to appeal. [*Hogan v. Turland*, 430 S.W. 2d 720 (Tex. Civ. App. – Austin 1968)

L. Writ of Procedendo

Writ of procedendo is an instrument by which the county court declares its lack of jurisdiction and returns jurisdiction back to the municipal court to proceed to collect the judgment; if defendant not in custody, court may issue a capias pro fine.

M. Withdrawal of Appeal

In non-record courts there is no way to withdraw or dismiss an appeal; in record courts, defendant or his or her attorney is required to file a motion to withdraw appeal.

REPORTS

A. Reports to Juvenile Court (Sec. 51.08(c), F.C.)

A court in which there is pending a complaint against a child alleging a violation of a misdemeanor offense punishable by fine only other than a traffic offense or public intoxication or a violation of a penal ordinance of a political subdivision other than a traffic offense shall notify the juvenile court of the county in which the court is located of the pending complaint and shall furnish to the juvenile court a copy of the final dispositions of any matter for which the court does not waive its original jurisdiction.

B. Reports to the Department of Public Safety

1. Notice of final convictions of traffic offenses reported to DPS. (Sec. 543.203, T.C.)
   a. Reporting required.
   b. Final conviction - Conviction becomes final when the time has expired for an appeal.
   c. Information reported:
      - Name and address of the defendant;
      - Defendant's driver's license number, if any, and type (Although the statute still mentions the types of operator's commercial operator's or chauffeur's licenses, DPS began a classified system of licensing some years ago. Texas now issues Class A, Class B, Class C, and Class M licenses. Also, under the Commercial Driver's License Act, the Department of Public Safety issued commercial driver learner's permit, Class A-CDL, Class B-CDL and Class C-CDL);
      - Race or ethnicity (Caucasian, African, Hispanic, Asian, or Native American) (Sec. 543.202(a) and (b)(1), T.C.);
      - If the driver's license is a commercial driver license, include the social security number, if available;
      - Registration number of vehicle involved;
      - Whether the vehicle was a commercial motor vehicle, and if it was, whether it was involved in the transporting of hazardous materials;

- Date and nature of offense, including whether the offense was a serious traffic offense as defined in Sec. 522.003(25) T.C. (Serious traffic offenses arise from the driving of a commercial motor vehicle for excessive speeding over 15 mph or more; reckless driving; violations of state and local traffic laws other than parking, weight or vehicle defect violations, arising in connection with a fatal accident; improper or erratic lane change; or following too closely);
- Whether a search of the vehicle was conducted and whether consent for the search was obtained (Sec. 543.202(b)(6), T.C.);
- Date of hearing;
- Plea;
- Judgment or whether bail was forfeited (final forfeiture); and
- Amount of fine or forfeiture.

d. Every magistrate or clerk of the court is required to report convictions or forfeiture of bail.

e. Reporting required within 30 days of final conviction (conviction final after appeal time has passed; court must report defendants on time payment after the appeal time has passed and do not wait for the final payment before reporting).

f. Failure to report may constitute misconduct in office and may be grounds for removal.

g. Offenses required to be reported - all traffic law convictions.

2. Report date course completed. (Art. 45.0511(l)(2), C.C.P.)

3. Convictions under Sec. 521.453, T.C.

a. Section 521.453, T.C., provides that it is unlawful to commit the following offenses:

- Selling, manufacturing, or distributing any document that is deceptively similar to a personal identification certificate or a driver's license, unless the document displays diagonally printed clearly and indelibly on both front and back "NOT A GOVERNMENT DOCUMENT" in solid red capital letters at least one-fourth of an inch in height; and
- Possessing any document that is deceptively similar to a personal identification certificate or a driver's license, unless the document displays diagonally printed clearly and indelibly on both front and back "NOT A GOVERNMENT DOCUMENT" in solid red capital letters at least one-fourth of an inch in height.

b. Sec. 521.341, T.C., provides that a license is automatically suspended on final conviction.

c. Sec. 521.347 says that the court in which the conviction is made shall require the surrender to the court of all drivers' licenses held by the person convicted. The clerk may, not later than the 10th day after the licenses are surrendered, forward the licenses together with a record of the conviction to DPS.

d. Court sets period of suspension of not less than 90 days or more than one year (Sec. 521.346, T.C.).

e. These convictions are automatic; court has no discretion except in setting the period of suspension.

4. Reporting cases to DPS when deferred disposition granted under Art. 45.051, C.C.P.

   a. Court does not report deferred traffic cases to the Department of Public Safety unless the judge subsequently proceeds with an adjudication of guilt when the defendant fails to comply (Sec. 543.204, T.C.) Court is required to report Alcoholic Beverage Code offenses granted deferred adjudication. (Sec. 106.117, A.B.C.)

   b. If non-compliance and defendant is subsequently convicted, report conviction no later than the 30th day after the date judge adjudicated guilt.

   c. Report to DPS, Alcoholic Beverage Code convictions that are granted deferred adjudication – An order of deferred adjudication for all Alcoholic Beverage Code offenses is required to be reported to DPS. (Sec. 106.117, A.B.C.)

5. Alcoholic Beverage Code Offenses.

   a. Court required to report Alcoholic Beverage Code convictions to DPS. (Sec. 106.117, A.B.C.)

   b. Court required to report to DPS the acquittal of the offense of driving under the influence of alcohol by minor. (Sec. 106.117, A.B.C.)

   c. Court required to order DPS to suspend driver's license. (Use DIC-15 form to report order of suspension.)

   d. Court required to report order of deferral.

6. Reporting juveniles failure to appear and failure to pay.

   a. A court shall report to DPS when a juvenile defendant charged with a traffic offense fails to appear, and when the court has a final disposition of the case, the court shall report the disposition to DPS. (Sec. 729.003, T.C.)

   b. A court shall report to DPS, the failure of a juvenile defendant charged with a traffic offense to pay a traffic fine, and when the court has a final disposition on the case, the court shall report the disposition to DPS. (Art. 45.060, C.C.P.) (DIC-81 form)

c. DPS will not issue a driver's license to any juvenile defendant charged with a traffic offense who fails to appear or defaults in payment of fine unless the court has filed an additional report on final disposition of the case. (Secs. 521.201(7), and 521.3451, T.C.)

d. DPS will suspend the driver's license of any juvenile defendant charged with a traffic offense who fails to appear unless the court has filed an additional report on final disposition of the case. (Sec. 521.294(5), T.C.)

e. A justice or municipal court may file a report with the Department of Public Safety to suspend a driver's license for a failure to appear or default of a payment of a fine for a misdemeanor punishable by a fine only within the preceding two years. (Sec. 521.294(6), T.C.)

7. Reporting appeals.

   a. If defendant appeals after conviction, conviction is not final and is not reported to DPS. (Art. 45.48, C.C.P.)

   b. If convicted in county courts, that court is responsible to report final conviction to DPS.

C. Report to the Texas Alcoholic Beverage Commission

Court is required to report upon request convictions to the Texas Alcoholic Beverage Commissions on a form provided by the Commission. (Sec. 106.116, A.B.C.)

D. Reports to Office of Court Administration

1. Monthly reports on court activity are authorized by Sec. 71.035, G.C.
2. All courts except for the Supreme Court and the Court of Criminal Appeals submit monthly reports.
3. Time requirement - reports must be mailed to Texas Judicial Council no later than 20 days following the end of the month reported.
4. City secretary required to notify Texas Judicial Council of the name of each person who is elected or appointed as mayor, municipal judge and clerk of municipal court within 30 days after date of person's election or appointment. (Sec. 22.073(c), L.G.C.)
5. Reporting form supplied by Texas Judicial Council.
6. Municipal judge is required to submit report; collecting the data is an administrative duty usually delegated to the court clerk.
7. Each section of the report required to be completed; any blank left in the report is interpreted as zero activity.

E. Quarterly Reports to State Comptroller of Public Accounts

1. Cities cannot provide for any court costs. (Art. 45.203(d), C.C.P.)
2. Judicial and Court Personnel Training. (Sec. 56.001, G.C.)
   a. Amount to Charge - $2 per case.
   b. Collected on all criminal offenses except parking and pedestrian offenses.
   c. Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.
   d. Reported by the last day of the month following each calendar quarter.
   e. Amount remitted to State - 90% if reported and remitted timely; 100% if not reported and remitted timely.
3. Compensation to Victims of Crime Fund. (Art. 56.55(a), C.C.P.)
   a. Amount to charge for municipal ordinance violations - $35 per case if offense is a city ordinance violation punishable by a fine of more than $200; $15 per case if city ordinance violation punishable by a fine of $200 or less.
   b. Amount to charge for state law violation - $15 per case if offense is a state law violation punishable by a fine of not more than $500. $35 per case if the offense is punishable by more than $500.
   c. Collected on all criminal offenses except parking and pedestrian offenses.
   d. Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.
   e. Reported the last day of the month following each calendar quarter.
   f. Amount remitted to State - 90% is reported and remitted timely; 100% if not reported and remitted timely.
4. Fugitive Arrest. (Art. 102.019, C.C.P.)
   a. Amount collected - $5.
   b. Collected on all criminal convictions except parking and pedestrian offenses.
   c. Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.
   d. Reported the last day of the first month following each calendar quarter.

e. Amount remitted to State - 90% is reported and remitted timely; 100% if not reported and remitted timely.

5. Juvenile Crime and Delinquency. (Art. 102.075(m), C.C.P.)
   a. Amount collected $0.50.
   b. Collected on all criminal convictions except parking and pedestrian offenses.
   c. Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.
   d. Reported the last day of the first month following each calendar quarter.
   e. Amount remitted to State – 90%.
6. Consolidate Court Costs (Art. 102.075, C.C.P.)
   a. Amount collected for city ordinance offenses: if the maximum possible amount of fine is $500 or less, the amount is $17; if the maximum possible amount of fine is more than $500, the amount is $40.
   b. Amount collected for state law offenses - $17.
   c. Collected on all criminal offenses except parking and pedestrian offenses.
   d. Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.
   e. Reported by the last day of the month following each calendar quarter.
   f. Amount remitted to State – 90% if reported and remitted timely; 100% if not reported and remitted timely.
7. Correctional Management Institute of Texas and Criminal Justice Center Fund (CMI) (Art. 102.075(n), C.C.P.)
   a. Amount collected - $0.50.
   b. Collected on all criminal offenses except parking and pedestrian offenses.
   c. Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.
   d. Reported by the last day of the month following each calendar quarter.

e. Amount remitted to State – 90% if reported and remitted timely; 100% if not reported and remitted timely.

8. **State Traffic Fee (Section 542.4031, T.C.) (HB 3588 eff. 9/1/03)**

   a. Amount collected - $30.

   b. Collected on Title 7, Subtitle C, Rules of the Road, T.C. offenses only.

   c. Collected on Subtitle C cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P.

   d. Reported by the last day of the month following each calendar quarter.

   e. Amount remitted to State – 95% if reported and remitted timely; 100% if not reported and remitted timely.

9. **Consolidate Fee (HB 2424 eff. 1/1/04)**

   a. All the above costs except the State Traffic Fee

   b. Amount collected - $40.

   c. Collected on all convictions except parking and pedestrian offenses. Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.

   d. Reported by the last day of the month following each calendar quarter.

   e. Amount remitted to State – 90% if reported and remitted timely; 100% if not reported and remitted timely.

10. Traffic Fund - Other court costs deposited in city treasury. (Sec. 542.403, T.C.)

    a. Amount collected - $3.

    b. Collected on all convictions under the Subtitle C, T.C.; Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.

    c. Money deposited in city treasury.

11. Child Safety Fund - School Crossing Guard Program. [Art. 102.014(c), C.C.P.]

    a. Cities over 850,000 population shall collect $2 to $5 on each city ordinance parking conviction (mandatory collection); Cities under 850,000 population may collect up to $5 on each city ordinance parking conviction (optional collection).

    b. All municipalities must collect $25 on Subtitle C, T.C. offenses that occur in a school crossing zone and for the offense of overtaking and

passing a school bus. Collected if deferred disposition or driving safety course under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P.

c. Amount collected for convictions under Sec. 25.093, E.C. (Parent Contributing to Nonattendance) and Sec. 25.094, E.C. (Failure to Attend) - $20. (Note: 78th Legislature changed title of "Parent Contributing to Truancy" to "Parent Contributing to Nonattendance")

d. In cities with a population of over 850,000, these funds are deposited in municipal child safety fund to be used for a school crossing guard program; in cities less than 850,000 population, these funds are to be used for a school crossing guard program if they city operates one and, if not, the city may deposit it in an interest-bearing account or expend it for child safety, health or nutrition programs including child abuse and intervention and drug and alcohol abuse prevention.

12. Arrest Fee. (Art. 102.011, C.C.P.)

a. Amount to Charge - $5.

b. Collected upon conviction for issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance or penal law, or for making an arrest without a warrant.

c. Not collected when minors request a teen court program. Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P., and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.

d. Reported by the last day of the month following each calendar quarter.

e. Amount remitted to State - when service performed by a peace officer employed by the State, 20% ($1) must be remitted to State; when the service is performed by a peace officer employed by the city, 100% of the fee is retained by the city.

13. Other Fees for services of a peace officer paid by defendant upon conviction. (Art. 102.011, C.C.P.)

a. For summoning a witness - $5.

b. For serving a writ not listed in Article 102.011 - $35.

c. For taking and approving a bond and, if necessary, returning the bond to the courthouse - $10.

d. For commitment or release - $5.

e. For summoning a jury - $5.

f. Mileage for performing a service listed in Article 102.011 - $0.29 per mile.

g. All necessary and reasonable expenses for meals and lodging incurred by the officer in the performance of services under Article 102.011. Expenses must meet the requirements of Section 611.001, G.C.

(Applies to conveying prisoner after conviction to county jail; conveying a prisoner arrested on a warrant or capias issued in another county to the court or jail of the county; and traveling to execute criminal process, to summon or attach a witness, and to execute process not otherwise described by Article 102.011, C.C.P.)

14. Time Payment Fee. (Sec. 51.921, G.C.) **(After 1/1/04 recodified into Section 133.103, L.G.C.) (HB 2424 eff. 1/1/04)**

    a. Amount collected - $25.

    b. Collected upon conviction when a defendant has been ordered to pay a fine, court costs, or restitution and seeks to pay on or after the 31st day after the date on which a judgment is entered assessing the fine, court costs, or restitution.

    c. Each month treasury custodians are required to send 50% of the fee to the State. Ten percent is deposited into the general fund of the city to be used for improving the efficiency of the administration of justice. The other 40% must be deposited in the city general fund subject to regular appropriation by the governing body.

    d. **Reported by the last day of the month following each calendar quarter starting 1/1/04). (HB 2424 eff. 1/1/04)**

15. Warrant Fee (Art. 102.011, C.C.P.)

    a. Amount to Charge for a warrant or a capias - $50.

        i. Collected upon conviction when a peace officer serves or processes issued arrest warrant or capias.

        ii. Fee imposed for the services of the following:

            - The law enforcement agency that executed the arrest warrant or capias, if the agency requests of the court, not later than the 15th day after the date of the execution of the arrest warrant or capias, the imposition of the fee on conviction; or
            - The law enforcement agency that processed the arrest warrant or capias, if the executing law enforcement agency failed to request the fee within 15 days.

        iii. Reported the last day of the month following each calendar quarter.

        iv. Amount remitted to the State - when service or processing is performed by a peace officer employed by the State, 20% ($10) must be remitted to State; when the service or processing is performed by a peace officer employed by the city, 100% of the fee is retained by the city.

b. Amount to charge for service of a summons (includes summons for a defendant or for the parents of a juvenile) - $35.

16. Excess Fines (Sec. 542.402, T. C.)

a. Applies to cities under 5,000 population.

b. Applies only to traffic fines collected for offenses under Title 7, T.C. and special expenses that may be collected under Art. 45.051, C.C.P. when the defendants are place on deferred disposition for those offenses.

c. The amount to be sent to the State applies to fines collected during city fiscal years that begin on or after September 1, 1989.

d. The city must report to the State when it reaches 20% of its budget. The city may keep all the traffic fines and Article 45.051 special expenses collected for offenses under Title 7, T.C. up to 30% of its total revenue in the preceding fiscal year. (Federal funds and bond sale proceeds do not count in figuring total revenue).

e. After fines total 30% of the budget, the city must remit the fines and special expenses for offenses under Title 7, T.C. except for $1.

17. Safety Belt and Passenger Safety Seat System Fines (Secs. 545.412 and 545.413, T.C.)

Each municipality at the end of its fiscal year shall send to the Comptroller an amount equal to 50 percent of the fines collected by the municipality for violations of offenses involving children under **Secs. 545.412 and 545.413(b), T.C. (Offenses with a $100 to $200 fine) (HB 418 eff. 9/1/03)**

18. Building Security Fee

a. City required to create municipal court building security fund by ordinance.

b. Amount to collect - $3.

c. Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.

d. Money may be used for the purchase of:

- The purchase or repair of X-ray machines and conveying systems;
- Handheld metal detectors;
- Walkthrough metal detectors;
- Identification cards and systems;
- Electronic locking and surveillance equipment;

- Bailiffs, deputy sheriffs, deputy constables, or contract security personnel during times when they are providing appropriate security services;
- Signage;
- Confiscated weapon inventory and tracking systems;
- Locks chains or other security hardware;
- Purchase or repair of bullet-proof glass;
- Purchase of alarms or similar security devices; and
- Continuing education on security issues for court personnel and security personnel.

19. Municipal Court Technology Fund (Art. 102.0172, C.C.P.)
    a. The city may be ordinance create the municipal court technology fund.
    b. The amount collected – A fee not to exceed $4.
    c. Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.
    d. Funds collected under this article may be used to only finance the purchase of technological enhancements and for **maintenance of technological enhancements (HB 1066 eff. 9/1/03)** for a municipal court, including:
        - Computer systems;
        - Computer networks;
        - Computer hardware;
        - Computer software;
        - Imaging systems;
        - Electronic kiosks;
        - Electronic ticket writers; and
        - Docket management systems.
    e. Fund administered by or under the direction of the governing body of the municipality.
20. Operating or loading overweight vehicle (Sec. 621.506, T.C.)
    a. A misdemeanor offense punishable by fine of not less than $100 and not more than $150. (Sec. 621.506(1), T.C.)
    b. Vehicle having a gross weight that is more than 5,000 but not more than 10,000 pounds heavier than the allowable gross weight, punishable by a fine of not less than $300 or more than $500. (Sec. 521.506(2), T.C.)

c. Vehicle having a gross weight that is more than 10,000 pounds heavier than the vehicle's allowable gross weight, punishable by a fine of not less than $500 or more than $1,000. (Sec. 521.506(3), T.C.)

d. On conviction before the first anniversary of the date of a previous conviction under this section, by a fine in an amount that is twice the amount specified by Subdivision (1), (2), or (3). (Sec. 521.506(4), T.C.)

e. On conviction of a violation of an axle load limitation, the court may assess a fine less than the applicable minimum amount if the court finds that when the violation occurred:

- The vehicle was registered to carry the maximum gross weight authorized for that vehicle under Section 621.101, T.C.; and
- The gross weight of the vehicle did not exceed that maximum gross weight. (Sec. 621.506(c), T.C.)

f. The judge shall promptly report a conviction under this section. (Sec. 621.506(d), T.C.)

g. A municipal court has jurisdiction over an offense under Section 621.506 for which the fine does not exceed $500. (A justice of the peace has jurisdiction over the offenses in this section.) (Sec. 521.506(f), T.C.)

h. A governmental entity that collects a fine under this section for an offense involving a vehicle having a gross weight that is more than 5,000 pounds heavier than the vehicle's allowable gross weight shall send an amount equal to 50 percent of the fine to the Comptroller unless the offense occurred within 20 miles of an international border in which event the entire amount of the fine shall be deposited for the purposes of road maintenance in the municipal treasury, if the fine was imposed by a municipal court. (Sec. 621.506(g), T.C.)

F. Distribution of Fine for Offense of Parent Contributing to Nonattendance

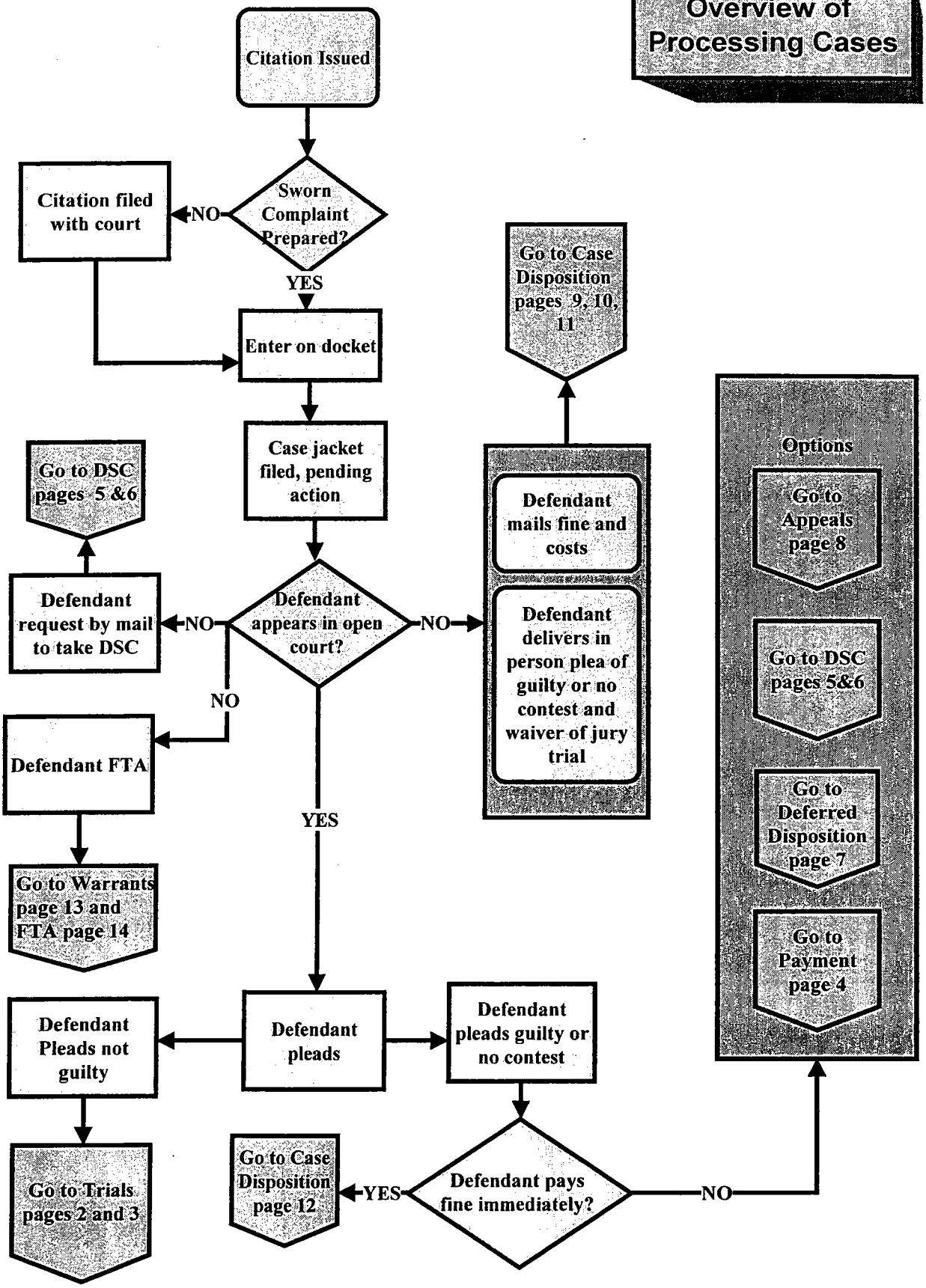
A fine collected for the offense of Parent Contributing to Truancy (The 78th Legislature changed the name of "Parent Contributing to Truancy" to "Parent Contributing to Nonattendance.") shall be deposited as follows:

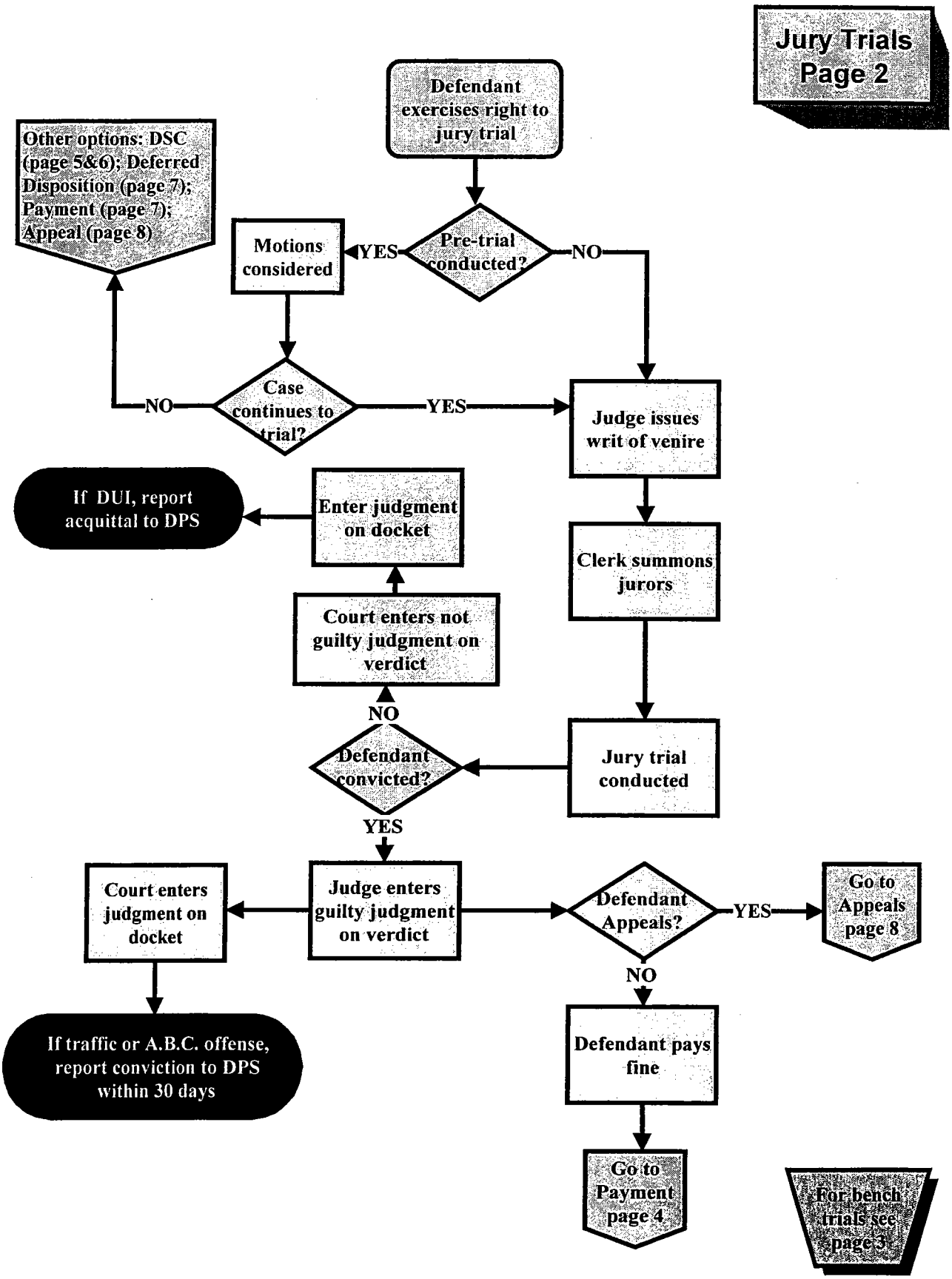
- One-half shall be deposited to the credit of the operating fund of the school district in which the child attends school or of the juvenile justice alternative education program that the child has been ordered to attend, as applicable; and
- One-half shall be deposited to the credit of the general fund of the county if the complaint is filed in the county court or justice court or the general fund of the municipality if the complaint is filed in municipal court. (Sec. 25.093, E.C.)

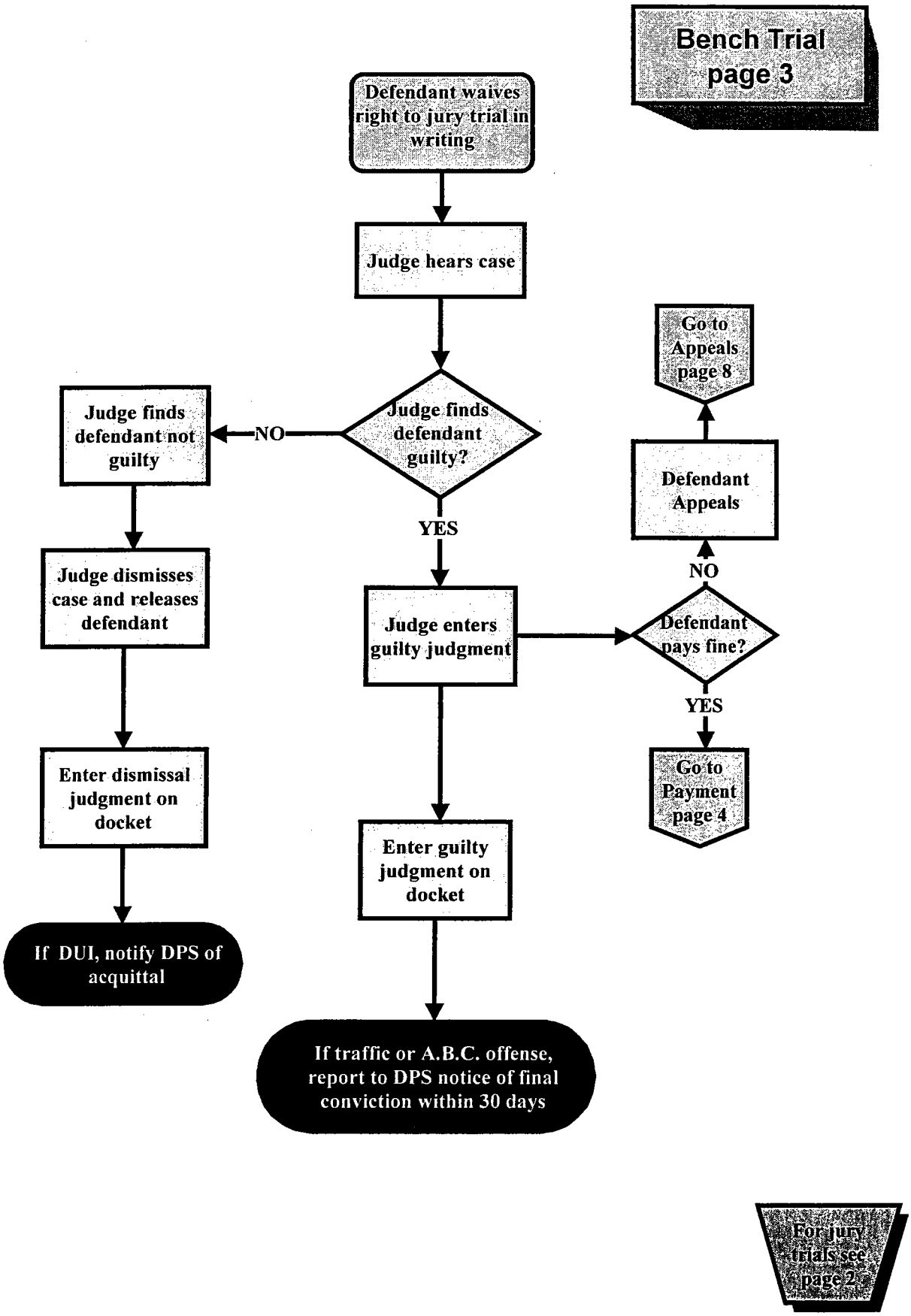
Abbreviations Defined

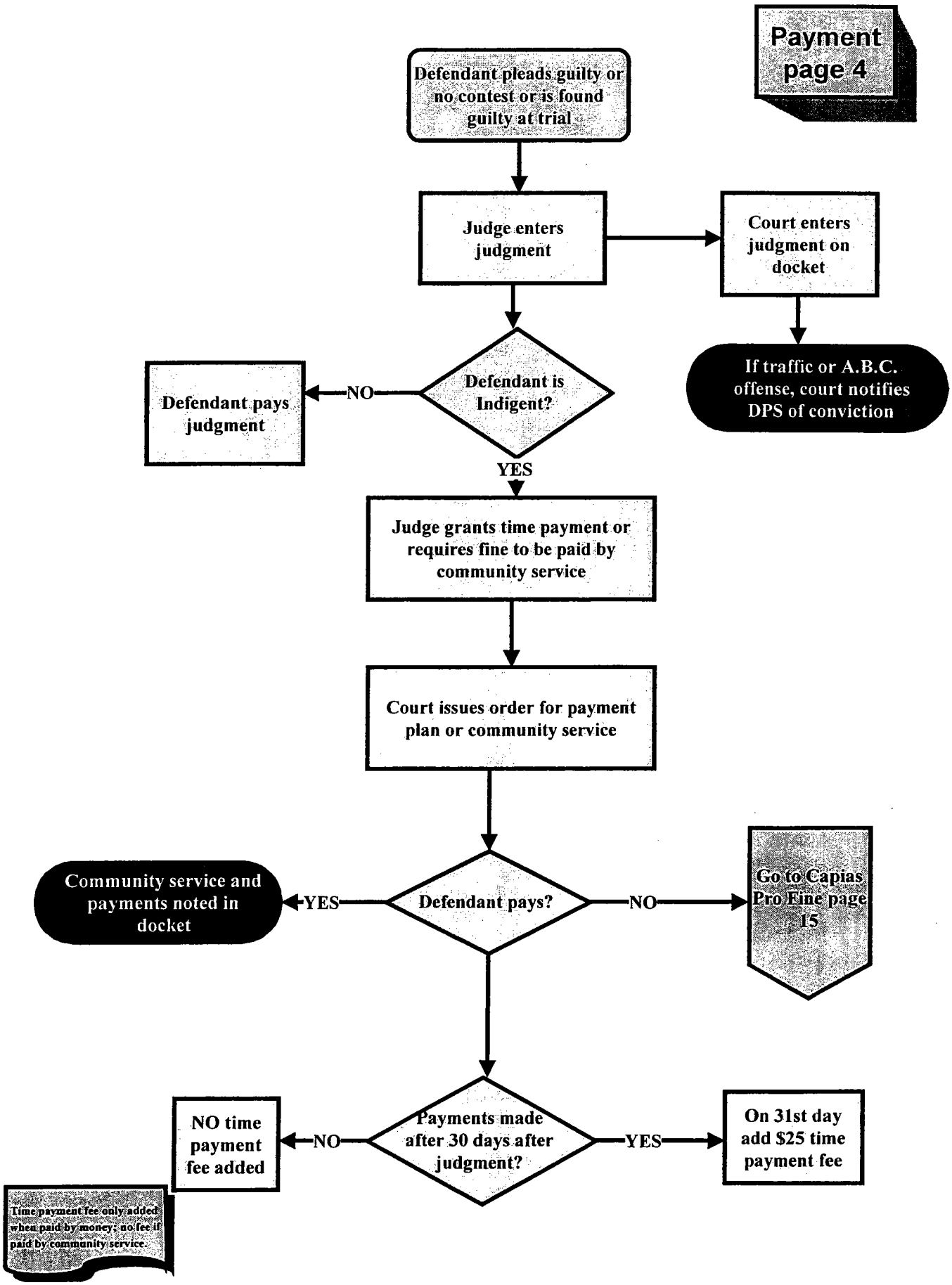
A.B.C.	Alcoholic Beverage Code
A.G. Op.	Attorney General Opinion
A.G. LO.	Attorney General letter Opinion
C.C.P.	Code of Criminal Procedure
DPS	Department of Public Safety
E.C.	Education Code
Elec. Code	Election Code
F.C.	Family Code
G.C.	Government Code
H.S.C.	Health and Safety Code
L.G.C.	Local Government Code
O.C.	Occupations Code
P.C.	Penal Code
T.C.	Transportation Code
Tex. R. Civ. P.	Texas Rules of Civil Procedure
V.T.C.S.	Vernon's Texas Civil Statutes

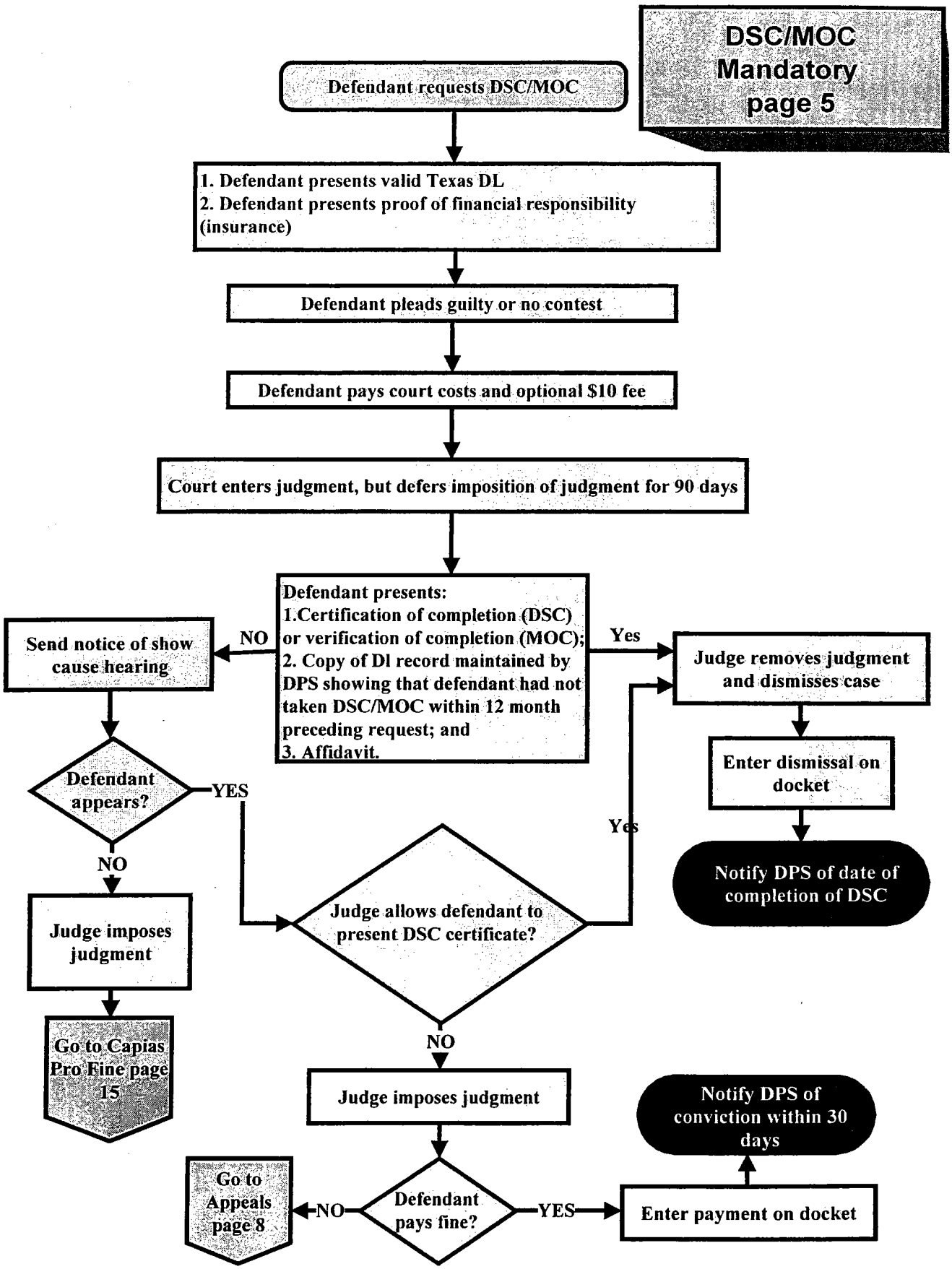
Overview of Processing Cases

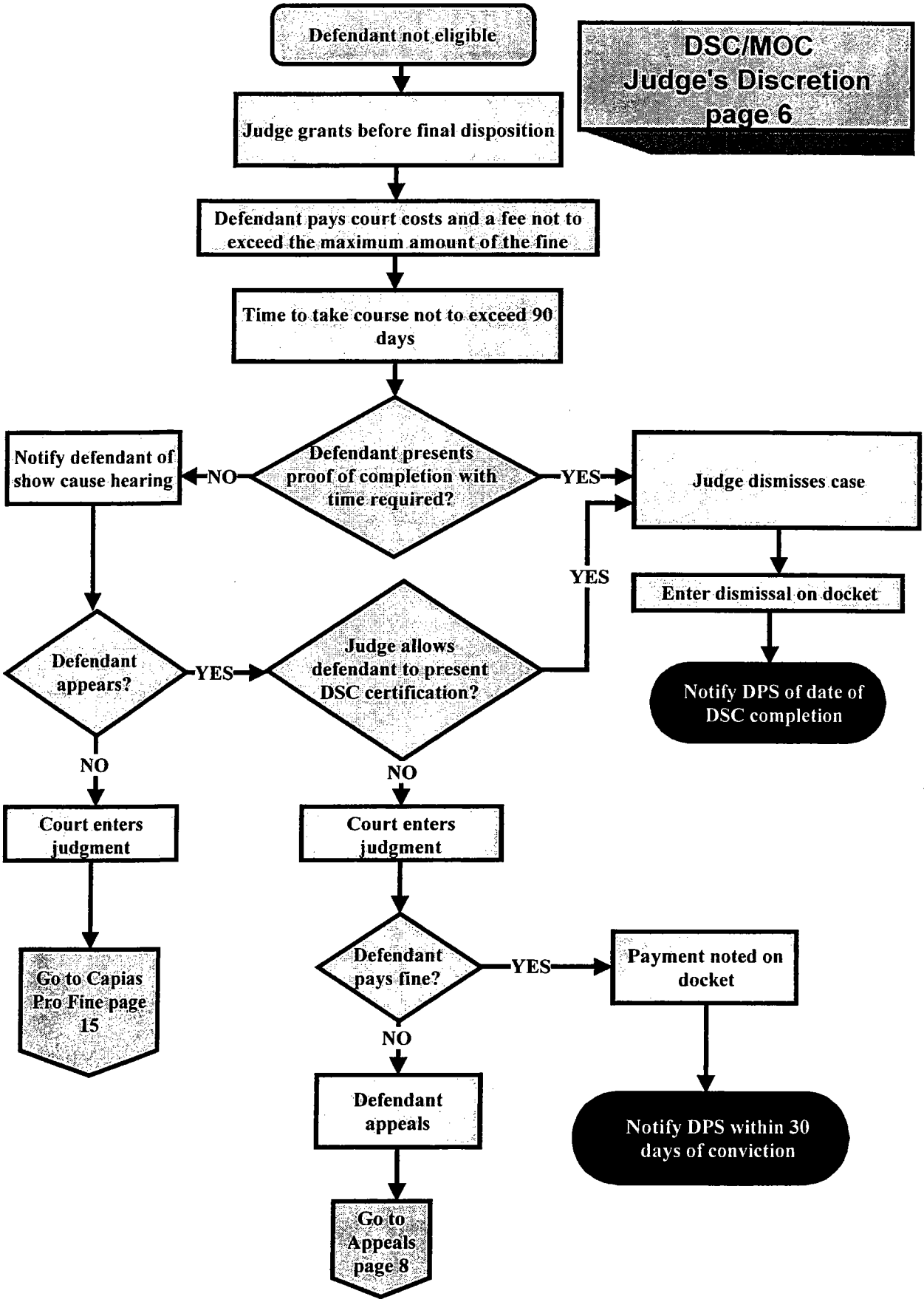



Jury Trials
Page 2
Defendant exercises right to jury trial
Other options: DSC (page 5&6); Deferred Disposition (page 7); Payment (page 7); Appeal (page 8)
Motions considered
YES
Pre-trial conducted?
NO
NO
Case continues to trial?
YES
Judge issues writ of venire
If DUI, report acquittal to DPS
Enter judgment on docket
Clerk summons jurors
Court enters not guilty judgment on verdict
NO
Defendant convicted?
Jury trial conducted
YES
Court enters judgment on docket
Judge enters guilty judgment on verdict
Defendant Appeals?
YES
Go to Appeals page 8
NO
If traffic or A.B.C. offense, report conviction to DPS within 30 days
Defendant pays fine
Go to Payment page 4
For bench trials see page 3

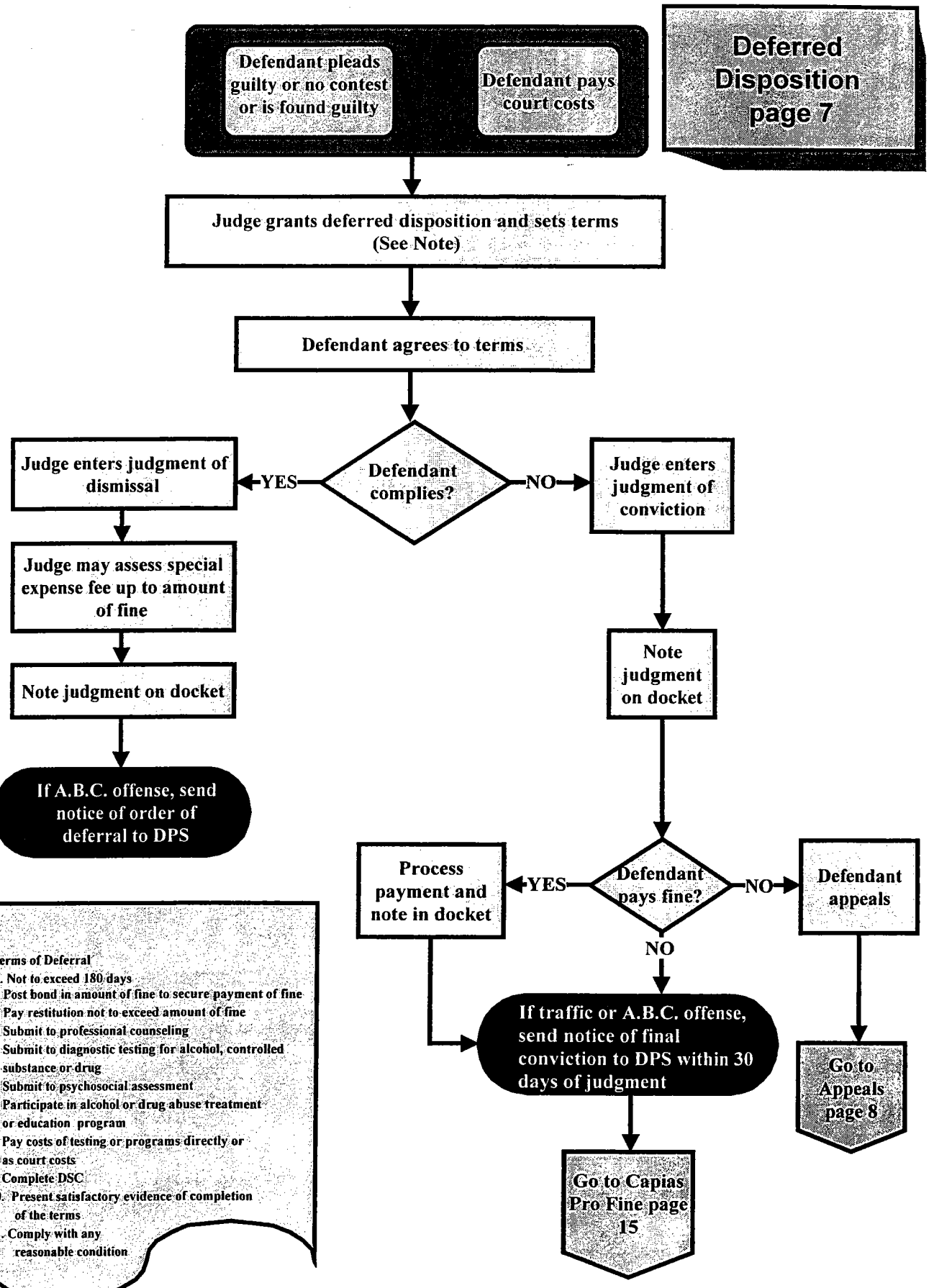

Bench Trial
page 3
Defendant waives right to jury trial in writing
Judge hears case
Judge finds defendant guilty?
NO
Judge finds defendant not guilty
YES
Judge dismisses case and releases defendant
Enter dismissal judgment on docket
If DUI, notify DPS of acquittal
Judge enters guilty judgment
Enter guilty judgment on docket
If traffic or A.B.C. offense, report to DPS notice of final conviction within 30 days
Defendant pays fine?
YES
Go to Payment page 4
NO
Defendant Appeals
Go to Appeals page 8
For jury trials see page 2

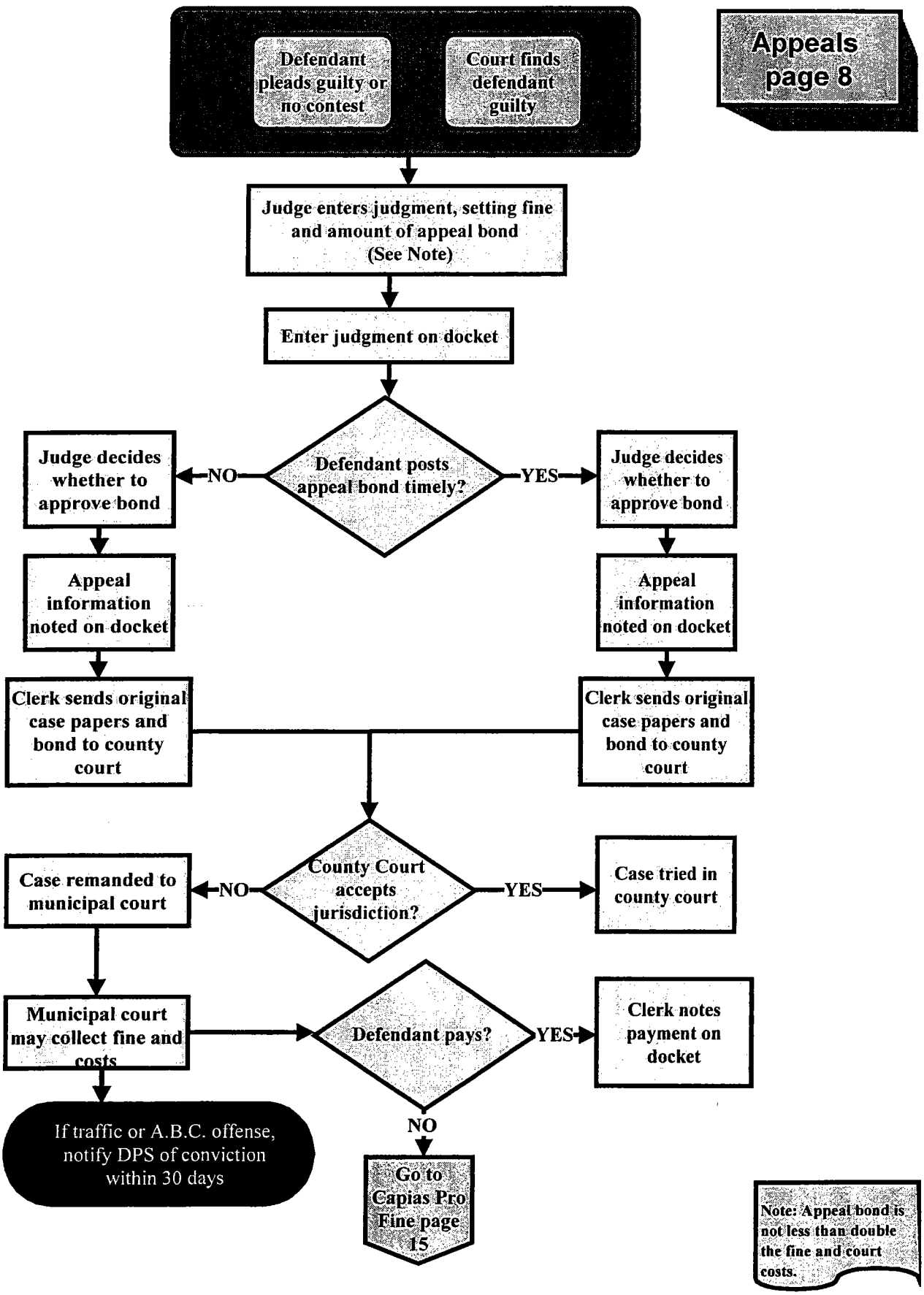

Payment page 4
Defendant pleads guilty or no contest or is found guilty at trial
Judge enters judgment
Court enters judgment on docket
If traffic or A.B.C. offense, court notifies DPS of conviction
Defendant is Indigent?
NO
Defendant pays judgment
YES
Judge grants time payment or requires fine to be paid by community service
Court issues order for payment plan or community service
Defendant pays?
YES
Community service and payments noted in docket
NO
Go to Capias Pro Fine page 15
Payments made after 30 days after judgment?
NO
NO time payment fee added
YES
On 31st day add $25 time payment fee
Time payment fee only added when paid by money; no fee if paid by community service.

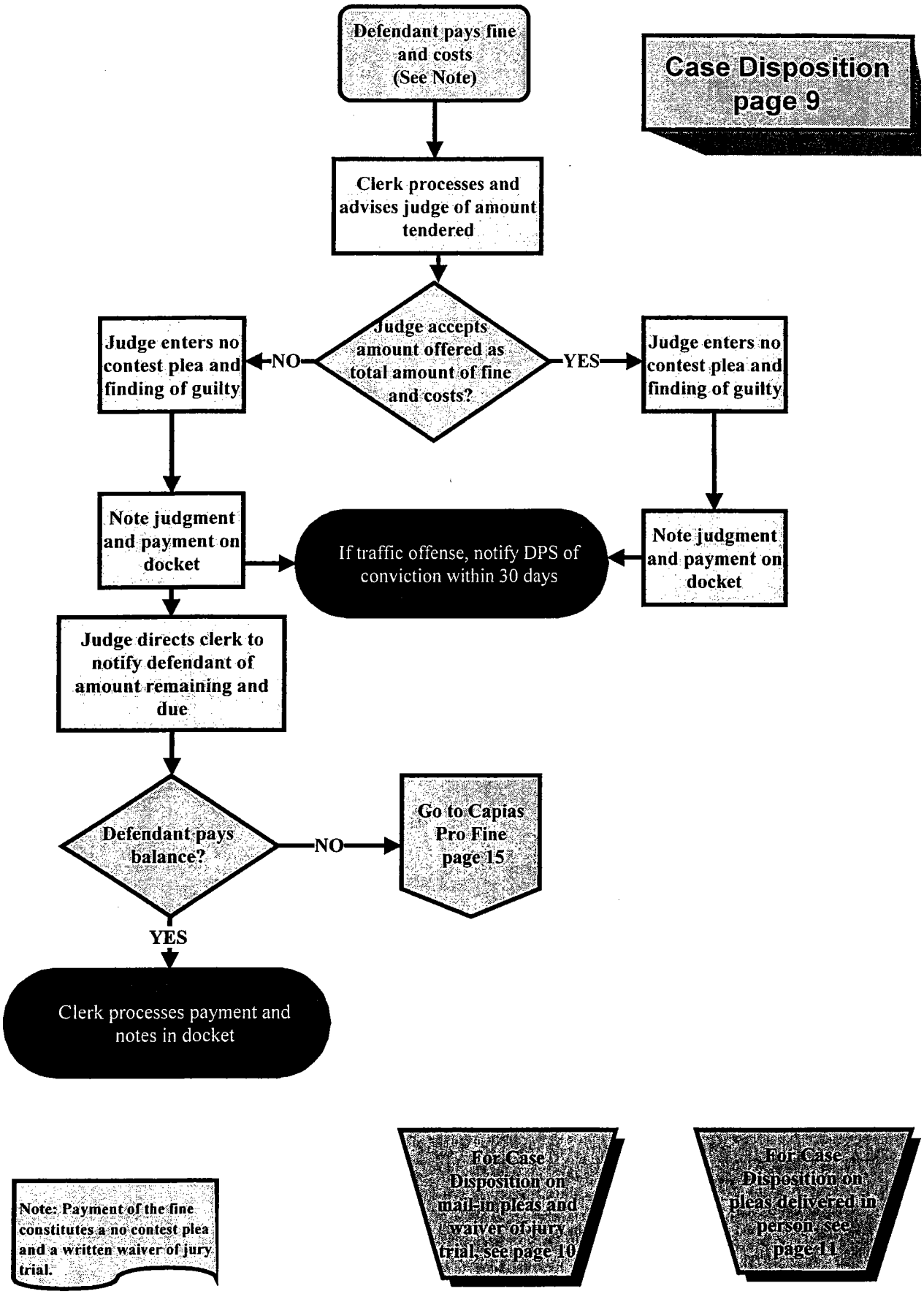

DSC/MOC Mandatory page 5
Defendant requests DSC/MOC
1. Defendant presents valid Texas DL
2. Defendant presents proof of financial responsibility (insurance)
Defendant pleads guilty or no contest
Defendant pays court costs and optional $10 fee
Court enters judgment, but defers imposition of judgment for 90 days
Defendant presents:
1.Certification of completion (DSC) or verification of completion (MOC);
2. Copy of DI record maintained by DPS showing that defendant had not taken DSC/MOC within 12 month preceding request; and
3. Affidavit.
NO
Send notice of show cause hearing
Yes
Judge removes judgment and dismisses case
Enter dismissal on docket
Notify DPS of date of completion of DSC
Defendant appears?
YES
NO
Judge imposes judgment
Go to Capias Pro Fine page 15
Judge allows defendant to present DSC certificate?
Yes
NO
Judge imposes judgment
Notify DPS of conviction within 30 days
Go to Appeals page 8
NO
Defendant pays fine?
YES
Enter payment on docket

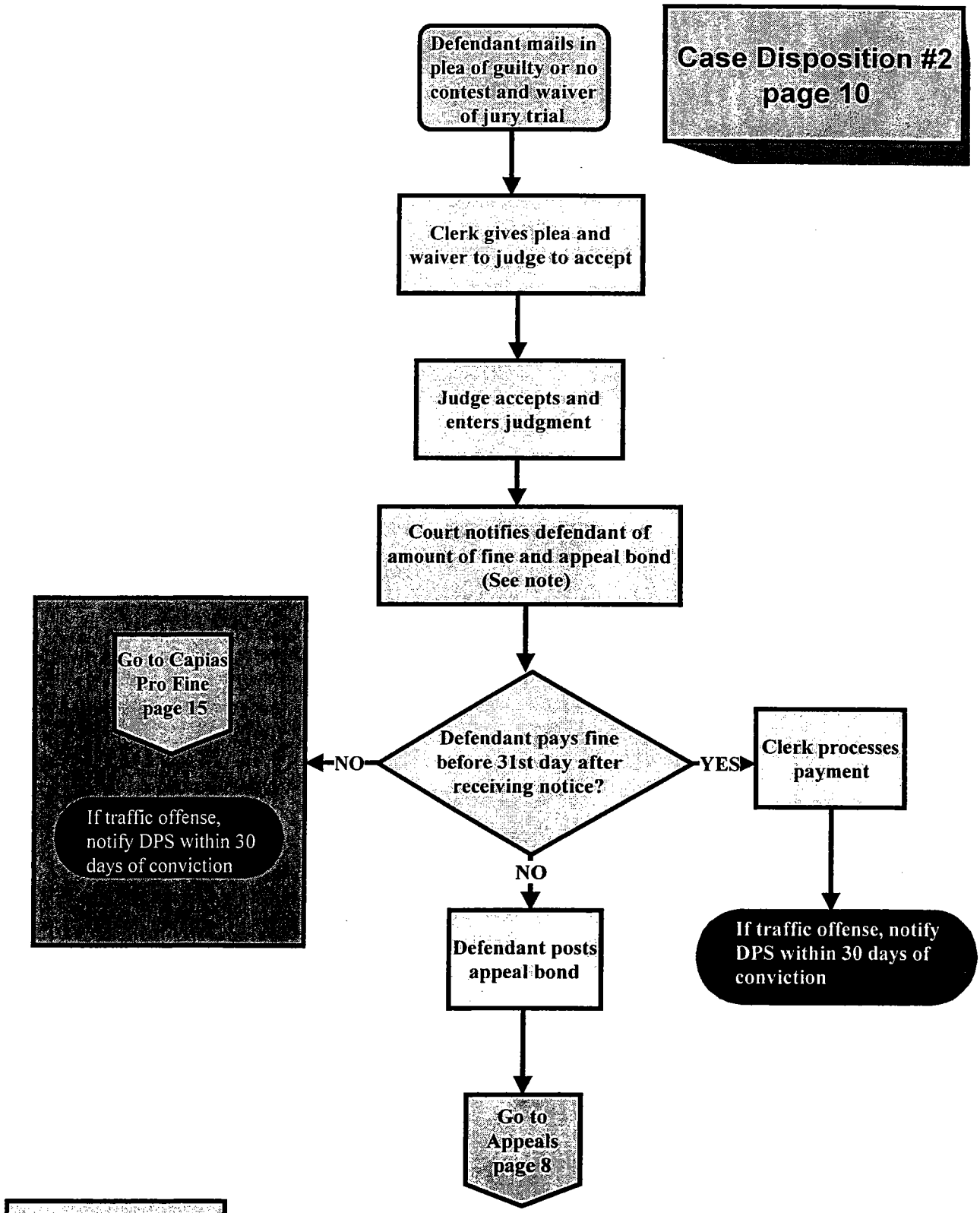

Defendant not eligible
DSC/MOC
Judge's Discretion
page 6
Judge grants before final disposition
Defendant pays court costs and a fee not to exceed the maximum amount of the fine
Time to take course not to exceed 90 days
Defendant presents proof of completion with time required?
NO
YES
Notify defendant of show cause hearing
Judge dismisses case
Enter dismissal on docket
Notify DPS of date of DSC completion
YES
Defendant appears?
YES
Judge allows defendant to present DSC certification?
NO
NO
Court enters judgment
Court enters judgment
Go to Capias Pro Fine page 15
Defendant pays fine?
YES
Payment noted on docket
NO
Defendant appeals
Notify DPS within 30 days of conviction
Go to Appeals page 8

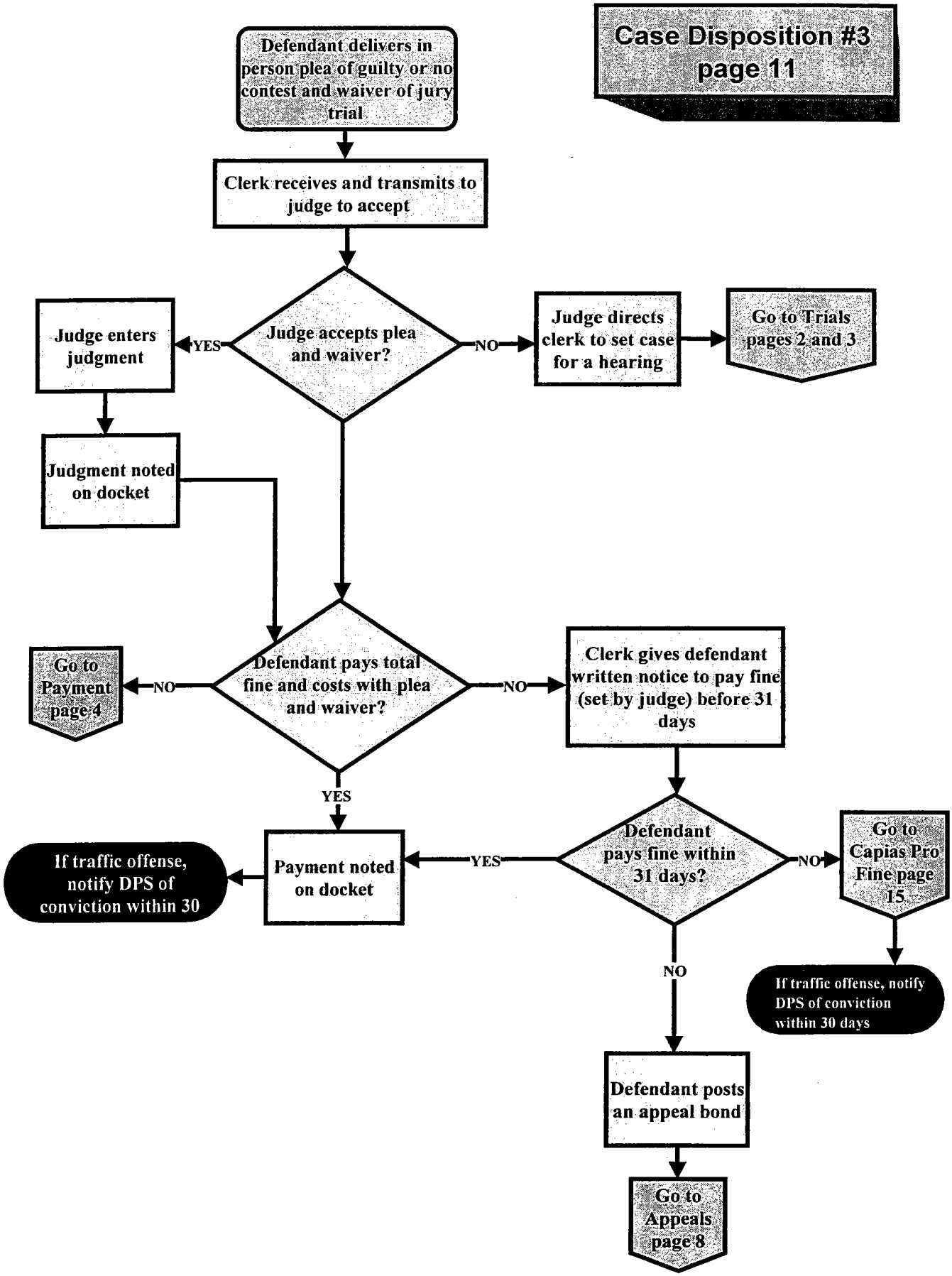
Deferred Disposition page 7

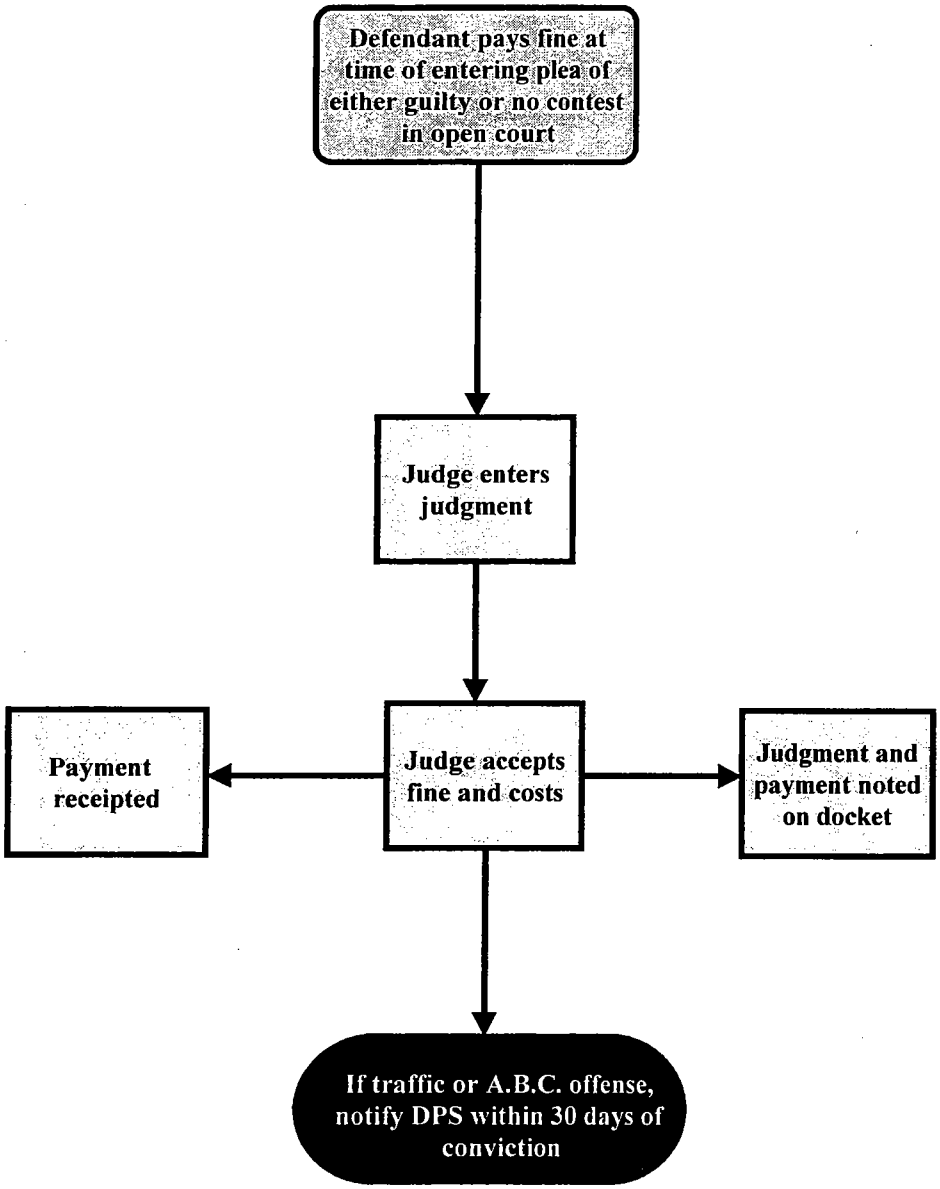


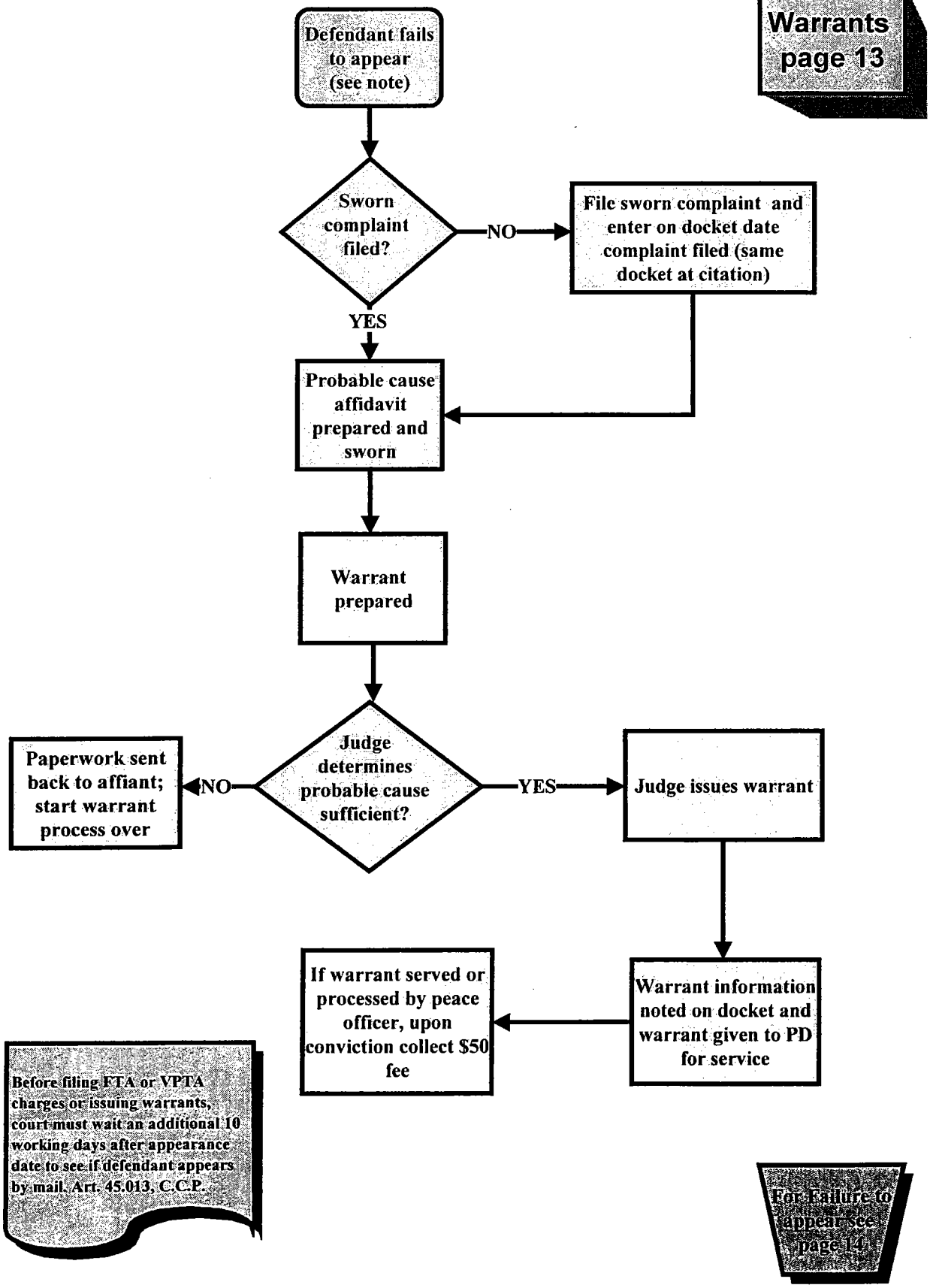

Defendant pleads guilty or no contest
Court finds defendant guilty
Appeals page 8
Judge enters judgment, setting fine and amount of appeal bond (See Note)
Enter judgment on docket
Defendant posts appeal bond timely?
NO
YES
Judge decides whether to approve bond
Judge decides whether to approve bond
Appeal information noted on docket
Appeal information noted on docket
Clerk sends original case papers and bond to county court
Clerk sends original case papers and bond to county court
County Court accepts jurisdiction?
NO
YES
Case remanded to municipal court
Case tried in county court
Municipal court may collect fine and costs
Defendant pays?
YES
Clerk notes payment on docket
NO
If traffic or A.B.C. offense, notify DPS of conviction within 30 days
Go to Capias Pro Fine page 15
Note: Appeal bond is not less than double the fine and court costs.

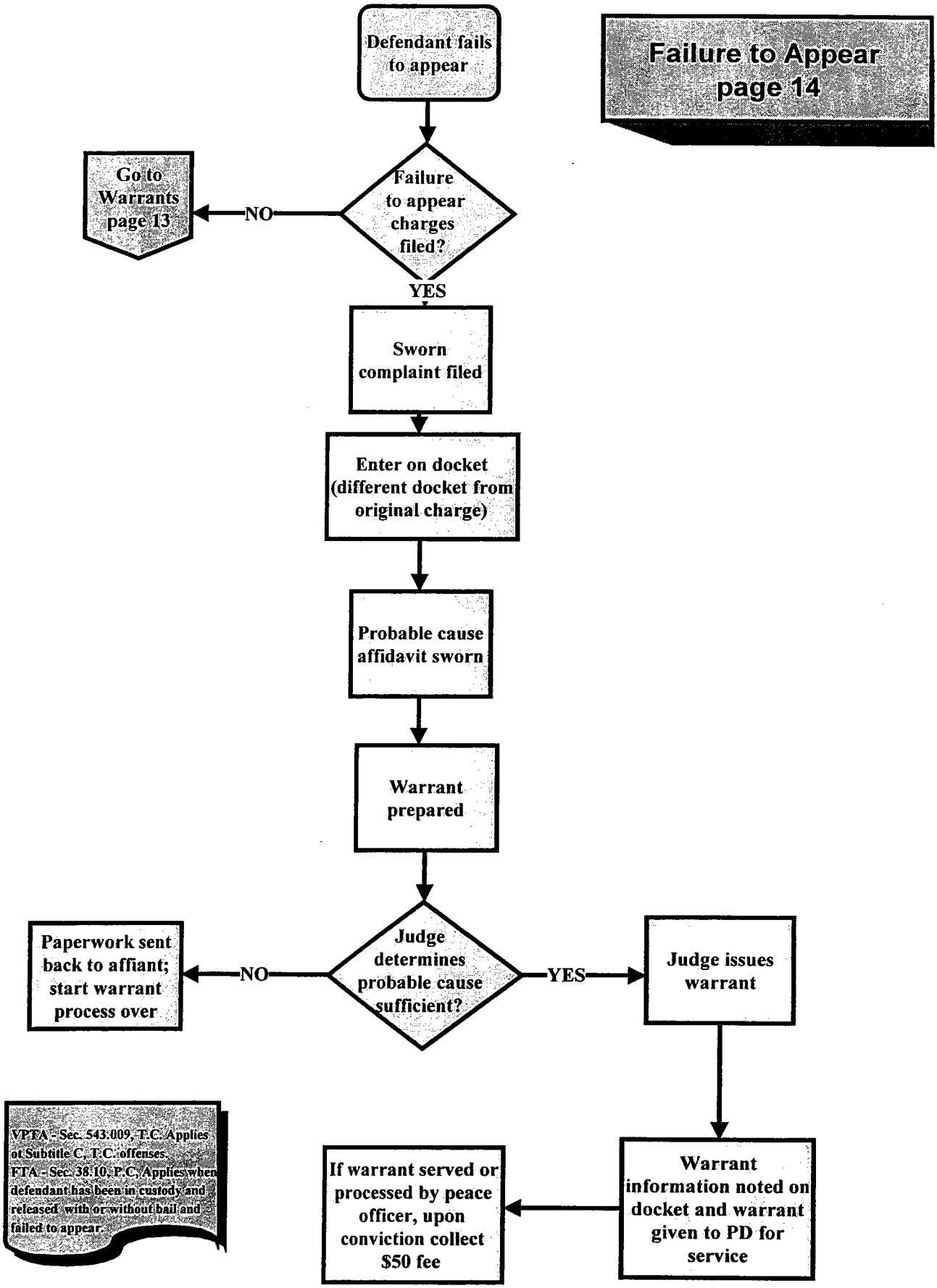

Defendant pays fine and costs (See Note)
Case Disposition page 9
Clerk processes and advises judge of amount tendered
Judge accepts amount offered as total amount of fine and costs?
NO
YES
Judge enters no contest plea and finding of guilty
Judge enters no contest plea and finding of guilty
Note judgment and payment on docket
If traffic offense, notify DPS of conviction within 30 days
Note judgment and payment on docket
Judge directs clerk to notify defendant of amount remaining and due
Defendant pays balance?
NO
Go to Capias Pro Fine page 15
YES
Clerk processes payment and notes in docket
Note: Payment of the fine constitutes a no contest plea and a written waiver of jury trial.
For Case Disposition on mail-in pleas and waiver of jury trial, see page 10
For Case Disposition on pleas delivered in person, see page 11

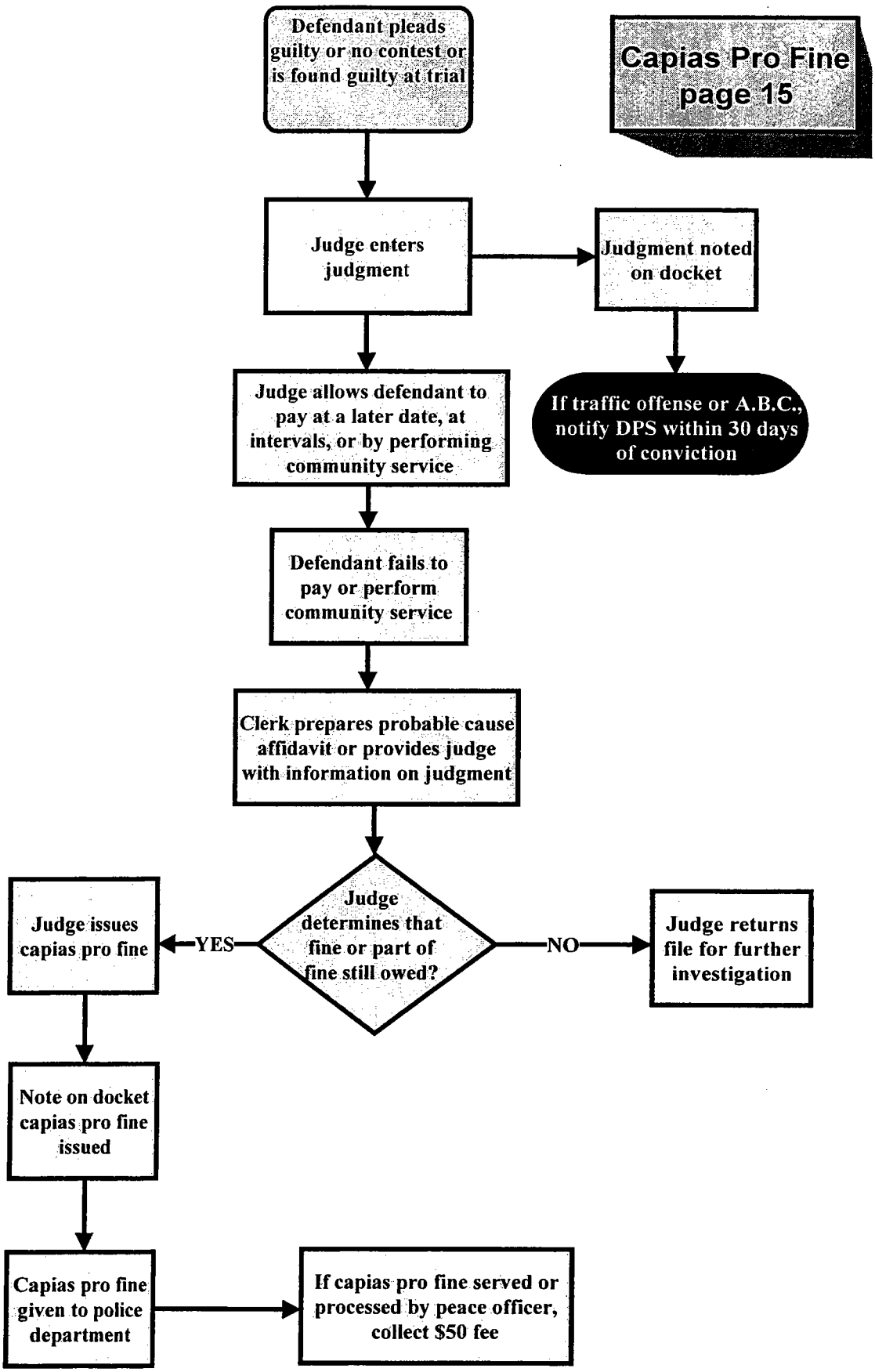

Case Disposition #2
page 10
Defendant mails in plea of guilty or no contest and waiver of jury trial
Clerk gives plea and waiver to judge to accept
Judge accepts and enters judgment
Court notifies defendant of amount of fine and appeal bond (See note)
Defendant pays fine before 31st day after receiving notice?
NO
YES
Go to Capias Pro Fine page 15
If traffic offense, notify DPS within 30 days of conviction
Clerk processes payment
If traffic offense, notify DPS within 30 days of conviction
NO
Defendant posts appeal bond
Go to Appeals page 8
Note:
Appeal bond is not less than double the amount of fine and court costs.


Case Disposition #3
page 11
Defendant delivers in person plea of guilty or no contest and waiver of jury trial
Clerk receives and transmits to judge to accept
Judge accepts plea and waiver?
YES
Judge enters judgment
NO
Judge directs clerk to set case for a hearing
Go to Trials pages 2 and 3
Judgment noted on docket
Defendant pays total fine and costs with plea and waiver?
NO
Go to Payment page 4
NO
Clerk gives defendant written notice to pay fine (set by judge) before 31 days
YES
Defendant pays fine within 31 days?
YES
Payment noted on docket
If traffic offense, notify DPS of conviction within 30
NO
Go to Capias Pro Fine page 15
If traffic offense, notify DPS of conviction within 30 days
NO
Defendant posts an appeal bond
Go to Appeals page 8


Defendant pays fine at time of entering plea of either guilty or no contest in open court
Judge enters judgment
Payment receipted
Judge accepts fine and costs
Judgment and payment noted on docket
If traffic or A.B.C. offense, notify DPS within 30 days of conviction


Defendant fails to appear (see note)
Sworn complaint filed?
NO
File sworn complaint and enter on docket date complaint filed (same docket at citation)
YES
Probable cause affidavit prepared and sworn
Warrant prepared
Judge determines probable cause sufficient?
NO
Paperwork sent back to affiant; start warrant process over
YES
Judge issues warrant
Warrant information noted on docket and warrant given to PD for service
If warrant served or processed by peace officer, upon conviction collect $50 fee
Before filing FTA or VPTA charges or issuing warrants, court must wait an additional 10 working days after appearance date to see if defendant appears by mail. Art. 45.013, C.C.P.
For Failure to Appear see page 14


Failure to Appear
page 14
Defendant fails to appear
Failure to appear charges filed?
NO
Go to Warrants page 13
YES
Sworn complaint filed
Enter on docket (different docket from original charge)
Probable cause affidavit sworn
Warrant prepared
Judge determines probable cause sufficient?
NO
Paperwork sent back to affiant; start warrant process over
YES
Judge issues warrant
Warrant information noted on docket and warrant given to PD for service
If warrant served or processed by peace officer, upon conviction collect $50 fee
VPTA - Sec. 543.009, T.C. Applies ot Subtitle C, T.C. offenses.
FTA - Sec. 38.10, P.C. Applies when defendant has been in custody and released with or without bail and failed to appear.


Capias Pro Fine
page 15
Defendant pleads guilty or no contest or is found guilty at trial
Judge enters judgment
Judgment noted on docket
If traffic offense or A.B.C., notify DPS within 30 days of conviction
Judge allows defendant to pay at a later date, at intervals, or by performing community service
Defendant fails to pay or perform community service
Clerk prepares probable cause affidavit or provides judge with information on judgment
Judge determines that fine or part of fine still owed?
YES
NO
Judge issues capias pro fine
Judge returns file for further investigation
Note on docket capias pro fine issued
Capias pro fine given to police department
If capias pro fine served or processed by peace officer, collect $50 fee

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TRAFFIC LAW

Presented by

Linda Frank
Municipal Judge – Plano
Municipal Prosecutor – Arlington

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

1. Organizes and restates existing Traffic Laws making no substantive changes.
2. Outlines traffic law topics into Titles, Chapters, Sections, and Paragraphs.
3. States general penalties that apply when no specific penalty is required.
4. Distinguishes the legal requirements of a Failure To Appear offense (FTA) and a Violation of a Written Promise to Appear.
5. Recognizes differences between first and subsequent offenses under certain traffic laws, e.g. the motor vehicle safety responsibility law and privileged parking law.

Traffic Law

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INTRODUCTION

The purpose of this material is to familiarize clerks with different aspects of traffic law in the Texas Transportation Code (T.C.). This material is an overview of traffic laws—not a comprehensive study of the entire Transportation Code; however, it does examine the issue of arrest and promise to appear, culpability, the penalties for commonly committed traffic offenses, the excess fines law, and quotas. This material; also includes a discussion of procedures for processing driving safety courses contained in the Code of Criminal Procedure (C.C.P.) and goes over collection of penalties.

PART 1
TRANSPORTATION CODE

The Transportation Code is organized to be user friendly. The Code is divided into *titles*. Each *title* is divided into *subtitles,* which in turn are further broken down into c*hapters*, *subchapters*, and *sections*. Within the Transportation Code, two primary titles—*General Provisions* and *Vehicles and Traffic*—contain information on traffic offenses.

A. Title 1 – General Provisions

Title 1, *General Provisions*, contains general information on the Transportation Code's purpose and construction and also includes rules regarding aviation, navigation, and pilots. Section 1.002, T.C., provides that Chapter 311, Government Code (Code Construction Act) applies to the construction of the Transportation Code except as otherwise expressly provided for by the Transportation Code.

B. Title 7 – Vehicles and Traffic

The bulk of traffic law matters are contained in Title 7, which is *Vehicles and Traffic*. It is divided into 10 subtitles that are outlined below.

1. Subtitle A

Subtitle A, *Certificates of Title and Registration of Vehicles*, contains rules regarding how vehicles are registered, sold, and tagged. Most of this subtitle is dedicated to special registration rules and has only a few provisions relating to municipal courts, which are the rules regarding operating a vehicle without proper registration. Most of these regulations are found in Chapter 502, Subchapter H - Penalties and Other Enforcement Provisions. The most common of these provisions are Operating a Vehicle Without a License Plate or Registration Insignia (Section 502.404, T.C.); Operation of a Vehicle with an Expired License Plate (Section 502.407, T.C.); and Wrong, Fictitious, or Obscured License Plate. (Section 502.409, T.C.)

2. Subtitle B

Subtitle B, *Driver's Licenses and Personal Identification Cards*, regulates driver's license requirements, records, applications, examinations, restrictions, expirations, suspensions, and fees. As in Subtitle A, most of the provisions are administrative and do not affect the day-to-day operation of the municipal courts. There are, however, driver's license offenses that can be filed in municipal court, such as License Required (Section 521.021, T.C.); License to Be Carried and Exhibited on Demand (Section 521.025, T.C.); and Permitting an Unauthorized

Person to Drive (Section 522.072, T.C.). In addition, there are rules regarding dismissal of license citations (Section 521.025(d) and 521.026, T.C.) and driver's license restrictions. (Section 521.221, T.C.) Dismissal information is discussed in Part 4.

3. Subtitle C

Subtitle C, *Rules of the Road*, is by far the largest subtitle in the Code. It is also the one most used by municipal courts. Subtitle C is divided into 14 chapters, which go from 541 through 600. (Note: Chapters 554 to 599 are reserved and do not contain any laws or rules.)

- Chapter 541, *Definitions*, contains the meaning of some of the more commonly used terms in traffic law.
- Chapter 542, *General Provisions*, provides rules for when traffic laws apply and for the authority of local governments to regulate traffic. (Section 542.202, T.C.) The chapter also contains the general penalty for Subtitle C offenses. Section 542.401 provides that a misdemeanor for which no other penalty is provided for in Subtitle C is an offense punishable by one dollar to $200. In addition, this chapter includes information on the traffic fund court costs (Section 542.403, T.C.); the disposition of fines (Section 542.402(a), T.C.); and the excess fines law. (Section 542.402(b), T.C.)
- Chapter 543, *Arrest and Prosecution of Violators*, contains laws regarding when arrests may be made on traffic offenses, written notices to appear, the violation of promise to appear offense, and traffic conviction reporting requirements. The chapter provides that each judge and clerk of a municipal court shall maintain records in all traffic cases and report to Department of Public Safety (DPS) all traffic convictions and bond forfeitures on traffic violations. (Sections 543.201 and 543.203, T.C.)
- Chapter 544, *Traffic Signs, Signals, and Markings*, includes signal and light definitions and states who may place control devices upon the public thoroughfares. The chapter also contains the first offenses commonly known as "moving violations," and familiar offenses, such as disobeying a red light (Section 544.007(d), T.C.) and disobeying a stop or yield sign. (Section 544. 010, T.C.)
- Chapter 545, *Operation and Movement of Vehicles*, contains the bulk of traffic offenses. Some of the regulations included are speed restrictions, turning movements, lane usage, right of way rules, and special stops. Parking regulations (Sections 545.301 - 545.303, T.C.) are also found in Chapter 545 as well as many miscellaneous traffic laws, including seat belt offenses (Section 545.413, T.C.); child safety seat laws (Section 545.412, T.C.); and children riding in the back of an open vehicle bed (Section 545.414, T.C.). Many little used traffic laws are found in the miscellaneous rules of Chapter 545.
- Chapter 546, *Operation of Authorized Emergency Vehicles*, sets out guidelines about when emergency vehicles may speed or disregard traffic regulations.
- Chapter 547, *Vehicle Equipment*, contains numerous regulations regarding necessary equipment on vehicles. It outlines safety, lighting, and other vehicle equipment, and includes laws on window tinting (Section 547.609, T.C.);

mufflers (Section 547.604, T.C.); brakes (Section 547.401, T.C.); stop lamps; (Section 547.323, T.C.); headlamps (Section 547.321, T.C.); and taillights (Section 547.322, T.C.). If an offense or a question arises about equipment found on a vehicle, it will most likely be found in Chapter 547. It is an offense in Texas to operate or, as an owner, to knowingly permit someone to operate a vehicle that is unsafe or fails to comply with the vehicle regulations of Chapter 547. (Section 547.004, T.C.)

- Chapter 548, *Compulsory Inspection of Vehicles*, provides the rules for inspection of vehicles. Although most of the chapter contains rules and restrictions on inspection stations, fees, and equipment, it does contain offenses that may be filed in municipal court. The most common offense is failing to display an inspection sticker. (Section 548.602, T.C.) Section 548.601 provides that an offense under Section 548.601, unless otherwise specified, is a Class C misdemeanor. The chapter does not define Class C misdemeanor; hence, courts must use the definition contained in the Penal Code, which provides that the maximum penalty is $500.
- Chapter 549 was repealed by Legislature in 1997.
- Chapter 550, *Traffic Accidents and Accident Reports*, explains how accident reports should be made, recorded, and distributed. There are a few offenses that may be filed in municipal court involving the duty of a motor vehicle operator to notify the owner, or to provide information upon striking an unattended vehicle, striking a fixture or highway landscaping, or having an accident where the damage done is less than $200.
- Chapter 551, *Operation of Bicycles, Mopeds, and Play Vehicles*, provides that bicycle riders must obey all traffic laws applicable to a vehicle operator. In addition, there are provisions about the way a bicycle should be ridden and safety equipment that should be on a bicycle. The bicycle rules also apply to mopeds, play vehicles, and electric personal assistive mobility devices.
- Chapter 552, *Pedestrians*, includes restrictions about when and where pedestrians may walk, including the use of sidewalks (Section 552.006, T.C.); crossing at signal lights (Section 552.001, T.C.); "jay walking" (Section 552.005, T.C.); and solicitation by pedestrians (Section 552.007, T.C.).
- Chapter 553, *Enactment and Enforcement of Certain Traffic Laws in Certain Municipalities*, deals with the authority of cities to erect traffic signs.
- Chapter 600, *Miscellaneous Provisions*, provides requirements about dropping or allowing material to be dropped on a highway (Section 600.001, T.C.) and authority for peace officers to require a driver to produce identification anytime within 250 feet of a Mexican border checkpoint (Section 600.002, T.C.). The chapter also allows school-crossing guards to direct traffic if they complete certain training requirements. (Section 600.004, T.C.)

4. Subtitle D

Subtitle D, *Motor Vehicle Safety Responsibility*, contains only one chapter, which is numbered 601. The subtitle provides that motor vehicle operators must maintain insurance or

have some other type of financial responsibility in the event that they have an accident. This requirement is aimed at protecting other drivers from bearing the cost of injuries or damages when an accident is not their fault. Section 601.191 provides for the offense of failure to maintain financial responsibility.

5. Subtitle E

Subtitle E, *Vehicle Size and Weight*, regulates the size and weight of trucks, truck loads including transporting milk and hazardous materials, weight of loads that can be hauled by a truck, transit permits, and the size of a transport vehicle.

6. Subtitle F

Subtitle F, *Commercial Motor Vehicles*, primarily provides rules for trucks operated under lease and vehicle marking requirements. Some offenses may be handled by municipal courts. (Section 621.507, T.C.) The subtitle contains commercial motor vehicle safety standards in Chapter 644, which regulates the trucking industry and ensures that federal highway safety regulations dealing with the truck industry are followed. It is rare that municipal courts become involved in motor carrier cases, but it is possible. When cases are filed under this subtitle, the authority to do so comes from Chapter 644. (Section 644.151, T.C.)

7. Subtitle G

Subtitle G, *Motorcycles and All Terrain Vehicles*, regulates motorcycles and all terrain vehicles. The most common offense from this subtitle is not wearing protective headgear while operating a motorcycle. (Section 661.003, T.C.) Other portions of the subtitle include motorcycle operating training and safety, all terrain vehicle operation and education, and sale of motorcycles.

8. Subtitle H

Subtitle H, *Parking, Towing, and Storage of Vehicles*, provides authority for cities to regulate parking, towing, and storage of vehicles. Municipal courts handle many parking violations. It contains laws regarding privileged (handicapped) parking violations (Section 681.011, T.C.); disabled parking placards (Section 681.002, T.C.); space designation (Section 681.009, T.C.); and enforcement. (Section 681.010 and 681.011, T.C.) Also found in Subtitle H is authority for certain cities to administratively adjudicate parking citations. (Section 682, T.C.) This procedure takes parking violations out of the courts and allows them to be heard by a hearing officer. Furthermore, Subtitle H regulates proceedings for handling abandoned vehicles (Section 683, T.C.) and towing vehicles. (Section 684, T.C.)

9. Subtitle I

Subtitle I, *Enforcement of Traffic Law Procedures*, contains several provisions important to municipal courts.

Chapter 702 permits a city to contract with the county or Texas Department of Transportation in the same manner to deny renewal of vehicle registration to persons with traffic warrants. (Section 702.003, T.C.) Chapter 703, Nonresident Violator Compact, allows cities to report out-of-state residents who fail to take care of traffic citations. The subtitle also contains the offense of allowing a dangerous driver to borrow a motor vehicle. This rule allows a person,

who lends his or her car to a person whose license is suspended under the driving while intoxicated laws, to be charged. (Section 705.001, T.C.) Chapter 706 permits a city to contract with the Department of Public Safety to deny renewal of a driver's license to defendants who fail to appear, fail to pay fine-only offenses, and fail to satisfy a judgment in a manner ordered by the court. (Section 706.004, T.C.)

Chapter 708 contains the provisions for driver's license points surcharge. The Driver's Responsibility System in Chapter 708 is based on a system of points related to traffic convictions that cause surcharges to apply when reapplying for a driver's license. DPS must make a list of "moving violations" that receive points. DPS may not include speeding less than 10 percent over the posted limit. Each separate incident may receive two points and three points if an accident resulted. Upon reaching six or more points in 36 months, the driver is accessed a surcharge of $100 plus $25 for each extra point. DPS must collect the surcharge and may use automatic license suspension to collect. Installment payments and credit card payment are provided for the citizen's comfort. A five-point warning by mail is also required. If a driver is convicted of DWI a $1,000 (first DWI), $1,500 (subsequent DWI), or $2,000 (DWI with BAC over 0.16) surcharge is collected by DPS. A no insurance violation under Chapter 601, Transportation Code earns the driver a surcharge of $250 per year. A no DL conviction under Section 521.021, Transportation Code, results in a surcharge of $100. These surcharges last three years.

Ticket quotas are prohibited under Subtitle I in Section 720.002.

10. Subtitle J

Subtitle J, *Miscellaneous Provisions*, is the last subtitle of Title 7. It regulates the operations of automobile clubs (Section 722, T.C.); provides requirements for cities and counties to have their name on city or county vehicles (Section 721, T.C.); contains the implied consent law, which requires motorists under certain circumstances, to consent to an alcohol test or to lose their driver's license (Section 724, T.C.); and regulates the transportation of loose materials. (Section 725, T.C.) In addition, Subtitle J provides rules about how minors can be charged and processed for traffic offenses. (Chapter 729, T.C.) A few other miscellaneous offenses found in Subtitle J include: selling a master key for motor vehicle ignitions (Section 728.011, T.C.); tampering with certain vehicle equipment (Section 727, T.C.); minimum road clearance (Section 727.001, T.C.); and driving more than 30 miles per hour in a park bordering the Gulf of Mexico (Section 727.002, T.C.)

PART 2
ISSUANCE OF CITATIONS

A. Peace Officer's Authority to Issue Citations

Peace officers may arrest persons who commit traffic violations. Specific authority for arresting persons who commit Subtitle C, *Rules of the Road*, violations is found in Section 543.001, T.C. Chapter 543 also provides authority for a peace officer to release a person arrested for a Subtitle C violation by issuing a citation instead of taking the person before a magistrate. (Section 543.003, T.C.) Section 543.007 provides additional rules for citations issued to the operator of a commercial motor vehicle or holder of a commercial driver's license or commercial driver learner's permit for the violation of a law regulating the

operation of vehicles on highways. Those citations must contain certain information required by the Department of Public Safety (DPS) rule that complies with Chapter 522, T.C. and the federal Commercial Motor Vehicle Safety Act of 1986. The DPS rules are in Section 16.100, Chapter 16, Title 37 of the Texas Administrative Code. See the section below for information required to be included on citations.

Under Chapter 543, T.C. in order for the person to secure release from custody, the person must sign a promise to appear. Later, if the person fails to appear in court as he or she promised to do, the person can be charged with the offense of violation of promise to appear. (Section 543.009, T.C.) This is a separate crime from the underlying traffic offense and is charged by complaint.

If a person violates traffic laws outside of Subtitle C, such as failure to maintain financial responsibility (Subtitle D), no driver's license (Subtitle B), expired registration (Subtitle A), or not wearing protective headgear while riding a motorcycle (Subtitle G), the peace officer has general authority to arrest under Chapter 14 of the Code of Criminal Procedure. Article 14.01(b), C.C.P. provides that a peace officer may arrest an offender without a warrant for any offense committed in his or her presence or within his or her view. After a peace officer makes an arrest under Chapter 14, the officer must take the person before a magistrate. The exception to this rule is for Class C misdemeanors. Subsection (b) of Article 14.06, C.C.P., provides authority for a peace officer to release a person arrested for a Class C misdemeanor by issuing a citation. The one exception to issuing a citation is for the offense of public intoxication. For that offense, the peace officer may take the person to jail or release the person to someone who will assume responsibility for the person. (Article 14.031, C.C.P.) If a person fails to appear after having been released by a citation issued under the authority of Article 14.06(b), C.C.P., the person can be charged with the offense of failure to appear. The offense of failure to appear is a Class C misdemeanor if the underlying offense charged in court is a Class C misdemeanor. (Section 38.10, P.C.) The elements of failure to appear require that the person has been in custody and was released with or without bail and then failed to appear according to the terms of the release. When a peace officer stops a person for committing a traffic violation, the person is under arrest and in custody until the officer decides whether to take the person to jail or to release by issuing a citation. Hence, for offenses outside of Subtitle C, when a person fails to appear, the proper charge is the Penal Code offense of failure to appear.

See the charts below for more information on issuance of citations and the differences between violation of promise to appear and failure to appear.

General Authority	**Specific Authority for Subtitle C, T.C. Offenses**
A peace officer's general authority to issue a citation for any Class C misdemeanor, except for the offense of public intoxication, is found in Article 14.06(b) of the Code of Criminal Procedure.	Specific authority for a peace officer to issue a notice to appear for offenses in Subtitle C of the Transportation Code is found in Section 543.003, T.C.

B. Required Issuance of Citation

Peace officers who stop a person for speeding may not take the person into custody and take them before a magistrate. Officers must issue a citation for the speeding offense and release the person if the person signs the citation. If the person refuses to sign the citation, the officer may take the person before a magistrate. Section 543.004, T.C., requires a citation to be written for violation of consumption or possession of alcoholic beverage in motor vehicle law in Section 49.03, P.C. The 77th Legislature, however, repealed Section 49.03 effective September 1, 2001, but added Section 49.031, P.C., entitled possession of alcoholic beverage in motor vehicle. Subsection 49.031(e), P.C., provides that a peace officer charging a person with an offense under this section, instead of taking the person before a magistrate, shall issue a written citation and not to appear before a magistrate.

C. When Officer May Not Issue a Citation

If a peace officer lawfully stops a person operating a motorcycle who is not wearing a helmet, the officer may not issue a citation if the operator is at least age 21 and can produce evidence of one of the following:

- successful completion of a motorcycle operator training and safety course; or
- medical benefits for injuries incurred as a result of operating or riding on a motorcycle in the amount of at least $10,000.

D. Information Included on Citations

1. Racial Profiling Information

Although the two statutes noted in the chart following this section do not require information to be gathered for racial profiling data, Article 2.133 of the Code of Criminal Procedure requires that law enforcement agencies collect on every traffic stop the following information:

- physical description of person;
- person's gender;
- the person's race or ethnicity;
- whether the officer conducted a search as a result of the stop and, if so, whether the person consented to the search;
- whether any contraband was discovered and the type of contraband; and
- the street address or approximate location of the stop.

Section 543.202, T.C., requires courts to report on each traffic stop the person's race or ethnicity and whether a search was conducted, and if so, was consent given. The best way to collect this information is by the citation. Hence, it is a good idea to include a place on the citation for this type of data.

2. Driving Safety Course Information

Article 45.0511(q), C.C.P., requires that a notice to appear issued for a Subtitle C violation include the following statement: "[Y]ou may be able to require that this charge be dismissed

by successfully completing a driving safety course or a motorcycle operator training course. You will lose that right if, on or before your appearance date, you do not provide the court with notice of your request to take the course." If this statement is not supplied, the person may continue to exercise the right described until the person is informed or until the disposal of the case. (Article 45.0511(r), C.C.P.)

3. Failure to Maintain Financial Responsibility Information

Section 601.233, T.C., requires that a citation for failure to maintain financial responsibility contain the following statement in type larger than other type on the citation: "A second or subsequent conviction of an offense under the Texas Motor Vehicle Safety Responsibility Act will result in the suspension of your driver's license and motor vehicle registration unless you file and maintain evidence of financial responsibility with the Department of Public Safety for two years from the date of conviction. The department (DPS) may waive the requirement to file evidence of financial responsibility if you file satisfactory evidence with the department showing that at the time this citation was issued, the vehicle was covered by a motor vehicle liability insurance policy or that you were otherwise exempt from the requirements to provide evidence of financial responsibility."

4. Commercial Operators and Driver Licenses

Section 543.007, T.C. requires a notice to appear issued to the operator of a commercial motor vehicle, holder of a commercial driver's license, or learner's permit to contain information that is required by DPS rule. These rules are set out in Title 37, Rule 16.100 of the Texas Administrative Code (T.A.C.). Rule 16.100 requires the following information on a citation issued to an operator of a commercial motor vehicle:

- name, address, physical description, and date of birth;
- the number, if any, of the person's driver's license;
- the registration number of the vehicle involved;
- whether the vehicle was a commercial motor vehicle as defined in Chapter 522, T.C.;
- whether the vehicle was involved in the transporting of hazardous materials; and
- the date and nature of the offense, including whether the offense was a serious traffic violation as defined in Chapter 522, T.C. They include: excessive speeding over 15 mph or more; reckless driving; violation of state and local traffic laws other than parking, weight or vehicle defect violations, arising in connection with a fatal accident; improper or erratic lane change; or following too closely. (Section 522.003(25), T.C.)

General Authority	Subtitle C, T.C. Offenses
Article 14.06(b), C.C.P. requires that the following information be included on the notice for Class C misdemeanors: • the time and place the person must appear before a magistrate; • the name and address of the person charged; and • the offense charged.	Section 543.003, T.C., requires that the following information be included on the notice for Subtitle C offenses: • the time and place the person is to appear; • the name and address of the person charged; • the offense charged; and • if applicable, the license number of the person's vehicle. (Section 543.003, T.C.)

E. Signature Required or Not Required

Whether a signature is required on a citation depends on the type of offense for which the citation is being issued and the authority used to issue the citation. See the chart below.

General Authority	Subtitle C, T.C. Offenses
No signature is required on a citation issued by a peace officer's authority under Article 14.06(b), C.C.P. Although a peace officer commonly asks for a signature on these citations, it is not an offense to violate a promise to appear since the statute does not require a signature. If a defendant fails to appear, the defendant can be charged with the Penal Code offense of failure to appear.	Section 543.005, T.C., requires a signature on a citation issued for Subtitle C, T.C. offenses. The signature may be obtained on a duplicate form or on an electronic device capable of creating a copy of the signed notice. The officer keeps the paper or electronic original and gives a copy of the notice to the person charged. (Section 543.005, T.C.) The person is then released.

F. Defendant's Notice to Appear

The peace officer gives the defendant a copy of the citation. This citation is the written notice to appear in court.

General Authority	Subtitle C, T.C. Offenses
Article 14.06(b), C.C.P. does not require that the defendant be given a certain number of days before requiring an appearance. It does require the officer to note the magistrate before whom the person is to appear.	A citation charging a Subtitle C offense must give the person at least 10 days from the date of the alleged violation to appear. If a person demands a shorter time period, the peace officer may set the appearance date for earlier than 10 days. The notice to appear must be before a municipal judge having jurisdiction of the offense. (Section 543.007, T.C.)

G. Violation of Promise to Appear/Failure to Appear

The violation of promise to appear charge and the failure to appear charge are separate offenses that must be initiated by sworn complaint. A person may comply with the promise

to appear for a traffic charge under Subtitle C, T.C. through an appearance by an attorney. (Section 543.009(a), T.C.) A person charged with a traffic offense outside of Subtitle C may also make an appearance through an attorney to plead guilty, nolo contendere, or not guilty. (Articles 27.14(a) and 27.16, C.C.P.)

General Authority	Subtitle C, T.C. Offenses
Failure to appear – Section 38.10, P.C. Maximum fine: $500 If the defendant fails to appear after having been issued a citation for a traffic offense outside of Subtitle C, T.C., the defendant may be charged with the Penal Code (P.C.) offense of failure to appear.	Violation of promise to appear – Section 543.009. T.C. Maximum fine: $200 If a defendant fails to appear after having signed a written promise to appear on a notice to appear issued for a Subtitle C, T.C. offense, the defendant can be charged with the offense of violation of promise to appear. The alleged traffic violator should make a proper appearance before the court. If a person fails to appear as required on the notice, the person may be charged with the misdemeanor offense of violating a written promise to appear.

PART 3
CULPABILITY

There is often confusion about whether traffic cases are criminal cases. The simple answer is, in Texas, traffic cases are considered to be criminal. Criminal matters are cases where the case is brought by the State for the purpose of punishing a convicted offender.

Nevertheless, there are differences between what is normally considered to be criminal conduct and conduct that constitutes a traffic offense. The major difference is the culpable mental state necessary to commit a criminal offense. Most criminal activity requires a state of mind where the defendant means to, intends to, or recklessly commits an offense. As an example, the offense of simple assault requires that the actor "intentionally or knowingly" causes physical contact when the person knows or should have reason to believe the other will regard the contact as offensive or provocative. (Section 22.01(a)(3), T.C.) It is necessary for the actor to know or intend to commit the offense.

Most traffic offenses, despite the fact that they are considered to be criminal, do not have a culpable mental state requirement. They are called "strict liability" offenses. When a person operates a vehicle, the person must adhere to a strict standard of care when driving. That standard holds people accountable when they break the law in spite of their intent. It would be inappropriate if they could defend reckless or negligent actions by relying on the fact they did not know or did not intend to violate the law. In addition, it would be impossible to criminally prosecute traffic violations if the State is required to prove the violator meant to break the law. In fact, probably very few intend to break traffic laws. It is a simple matter of them being careless or not paying attention. Consequently, strict liability for traffic offenses is utilized to raise a driver's safety consciousness.

Although most traffic related cases have no culpable mental state, some do. If an offense has a mental state requirement, it is clearly contained in the law. An example of a traffic–related

matter with a culpable mental state is the offense of knowingly permitting an unauthorized person to drive. The mental state is obviously "knowingly." (Section 521.458, T.C.)

PART 4
CONDITIONS APPLIED TO TRAFFIC OFFENSES

In Texas, certain conditions apply to traffic offenses that depend, in some instances, on the rules governing some of the traffic offenses. These conditions include exceptions, defenses, dismissals, and penalties.

A. Exceptions

Some traffic laws include exceptions. If a person falls into one of the exceptions, that person cannot be prosecuted for disobeying the law. The most common exceptions are to wearing motorcycle protective headgear or to obeying the speed limit. The exceptions to wearing a motorcycle helmet require that the person be at least age 21 and has completed a motorcycle training safety course or is covered by a health insurance plan providing the person with at least $10,000 in medical benefits for injuries incurred as a result of a motorcycle accident. The speed limit exceptions include an authorized emergency vehicle responding to a call; a police patrol; or a physician or ambulance responding to an emergency call. (Section 545.365(a), T.C.) Nevertheless, municipalities are permitted to regulate, by ordinance, the speed of an ambulance; an emergency medical service vehicle; or an authorized vehicle operated by a blood or tissue bank. (Section 545.365(b), T.C.)

B. Defenses

In some instances, statutes provide a defense to the prosecution, which means that if a person charged with a certain crime presents to the court evidence that is provided by law to be a defense to the prosecution, the state is prohibited from prosecuting the defendant and must make a motion to the court to dismiss the charge.

The most common offenses that contain defenses to the prosecution include failure to display a driver's license or inspection certificate, failure to maintain financial responsibility, and adult seatbelt violations. These will be discussed under the specific offenses listed in this material.

C. Dismissals

There are some misconceptions about what charges may be dismissed by a court. Actually, to be dismissed, charges must have the concurrence of a prosecutor as well as the judge. (Article 32.02, C.C.P.) As a practical matter, the law recognizes a few exceptions for municipal courts.

- In certain cases, the court must dismiss if the person has a valid defense to the prosecution or has performed some required action.
- In other cases, the court has discretion to dismiss.

If a case is dismissed, a defendant is released without any liability. Generally, the court does not report anything to the Department of Public Safety (DPS), except in the instance of

completion of a driving safety course. Hence, a dismissal does not affect a person's driving record.

When a defendant has a defense to the prosecution, the court dismisses the case if the defendant presents the required proof to court. For example, it is a defense to prosecution if the person had a valid driver's license at the time the citation was issued or if the person had valid insurance at the time he or she was issued a citation for failure to maintain financial responsibility. The court must dismiss in these two cases and are not allowed to charge an administrative fee or any fee.

Another instance that the court must dismiss is when a defendant completes a driving safety course or a motorcycle operator training course and presents evidence of the completion to the court. Even though the court reports the completion of the driving safety course or motorcycle operator course to DPS, the report is only used to determine a person's eligibility to take a later course for another citation and does not affect the person's driver's license. In this case, the court must dismiss because the defendant complied with a requirement of the court. Although the court cannot collect a fine when a person is granted the right to take a driving safety course, the court must collect court costs and may collect a $10 administrative fee.

If a judge grants deferred disposition for a traffic offense and the defendant completes the terms of the deferral, the judge must dismiss the case. After the case is dismissed, the judge may assess a special expense fee, which cannot exceed the amount of fine set at the beginning of the deferral.

Another example of when a judge is required to dismiss involves the offense of expired inspection certificate. If the inspection certificate is expired less than 60 days and the defendant obtains a valid inspection certificate within 10 working days of receiving the citation, the court must dismiss and must charge a $10 fee.

The law permits the judge to dismiss without a prosecutor motion for the following offenses: expired driver's licenses, expired motor vehicle inspections that are expired more than 60 days, and expired registration of vehicles if the defendants remedy the problem within 10 working days. The court can assess a $10 fee upon dismissal.

There are other situations where it is rumored that "fixing" a problem will cause a citation to be dismissed. Those situations simply do not exist. Under the law, it is not a defense to an equipment violation that the car has been repaired. Nor is evidence of a broken speedometer a basis for a speeding charge to be dismissed. The most a judge can do is consider the repair and lower the fine. Everyone facing a traffic fine would like to have the charge dismissed. Unfortunately, the law only allows some cases to be disposed of without trial.

PART 5
PENALTIES

When someone is convicted of a fine-only offense, the court orders the defendant to pay a monetary penalty. Penalty ranges can vary for different reasons. The Transportation Code does not treat persons under the age of 17 differently than adults regarding the penalties for traffic violations. The penalties are the same. (Section 724.001(c), T.C.)

A. General Penalties

The Transportation Code contains many offenses. Some of them have a specific penalty, but most do not. If an offense does not specify a penalty, courts must check to see if there is a general penalty that applies. General penalties are fairly standard. See the chart below for examples of general penalties. The chart does not list all general penalties in the Transportation Code, just a few of the more common ones that the municipal court will probably use.

Subtitle	General Penalty
Subtitle A (*Certificates of Title and Registration of Vehicles*)	*Registration of Vehicles*: maximum fine of $200 (Section 502.401)
Subtitle B (*Driver's Licenses and Personal Identification Cards*)	*Driver's Licenses and Certificates*: maximum fine of $200 (Section 521.461)
Subtitle C (*Rules of the Road*)	Subtitle C: $1 to $200. (Section 542.401)
Subtitle E (*Vehicle Size and Weight*)	Subtitle E: maximum fine $200; penalty escalates for subsequent convictions. (Section 621.507)

B. Specific Penalties

There are some exceptions to the general penalties. Please refer to the chart below to see offenses with specific penalties:

Offense	Penalty	Cite
Passing a school bus loading or unloading children	Minimum: $200 Maximum: $1000	Section 545.066, T.C.
Failing to secure a child in a passenger safety seat system	Minimum: $100 Maximum: $200	Section 545.412, T.C.
Failure of the driver to secure himself or herself with a safety belt	Minimum: $25 Maximum of $50	Section 545.413, T.C.
Operating or loading overweight vehicle	Minimum: $100 Maximum: $150	Section 621.506(b)(1), T.C.
Having a vehicle that has a single axle weight, tandem axle weight, or gross weight that is more than 5,000 but not more than 10,000 pounds heavier that the vehicle's allowable weight	Minimum: $300 Maximum: $500	Section 621.506(b)(2), T.C.
Not wearing protective headgear when operating or riding as a passenger on a motorcycle	Minimum: $10 Maximum: $50	Section 661.003(h), T.C.
Operating an all-terrain vehicle without a sticker (registration)	Maximum: $500 (Class C Misdemeanor)	Section 502.406, T.C.

Sometimes, an offense with a specific penalty falls outside the municipal court jurisdiction. See the chart below.

Offense	Penalty	Cite
Knowingly altering a registration insignia	Maximum: $2,000 and/or a jail term not to exceed 180 days (Class B Misdemeanor)	Section 502.409, T.C.
Providing false or incorrect information or, without legal authority, signing the name of another person on a statement or application filed or given as required by Chapter 502	Prison term of 2 to 10 years and/or a maximum fine of $10,000 (Third Degree Felony)	Section 502.410, T.C.
Racing on highway which also includes exhibition of acceleration contest	Maximum: $2000 and/or a jail term not to exceed 180 days (Class B Misdemeanor)	Section 545.420, T.C.

C. Prior Convictions

In some instances, the penalty range is different depending on prior convictions. Subsequent offenses must be enhanced in order for the higher penalties to apply. For example:

- defendants convicted of failure to maintain financial responsibility (specific penalty):
  - first conviction - $175 to $300 (Section 601.191, T.C.),
  - subsequent convictions - $350 to $1000 (the penalty for the subsequent conviction also includes ordering the sheriff to impound the vehicle) (Sections 601.191 and 601.261, T.C.);
- defendants convicted of parking in a privilege (handicapped) parking space are assessed a penalty on a escalating scale (specific penalty):
  - first conviction - $250 to $500,
  - second conviction - $300 to $600,
  - third conviction - $300 to $600 plus 10 to 20 hours community service,
  - fourth conviction - $500 to $1000 plus 20 to 50 hours community service, and
  - fifth conviction - $1000 plus 50 hours of community service;
- defendants convicted of Certificate of Title Act violations (general penalty):
  - first conviction - $1 to $100,
  - subsequent convictions - $2 to $200 (the jury has the discretion to assign the fine) (Section 501.157(a), T.C.).

D. Construction or Maintenance Work Zones

For violations that occur in a construction or maintenance work zone when workers were present, the penalty that may be assessed is higher and also applies to persons under the age of 17. For example, for disobeying instructions, signals, warnings, or markings of a warning sign in a construction zone when workers were present, the penalty range is doubled to not less than $2 or more than $400. (Section 472.022(d), T.C.) This means that the judge has the discretion to double the minimum and maximum fines, but is not required to do so. The higher penalty may not be considered by the court unless the construction zone is marked by signs that state, "Fines double when workers present." The citation must also include a statement that workers were present. (Sections 472.022(e)(2), T.C.) Defendants charged with an offense under Section 472.022, T.C. are not eligible for a driving safety course or for deferred disposition. (Section 472.022(f), T.C.)

For violations under Subtitle C committed in a construction or maintenance work zone when workers were present, the judge has the discretion to assess twice the minimum or maximum fine that is applicable to an offense committed outside a zone. (Section 542.404 T.C.) The higher penalty may not be considered by the court unless the construction zone is marked by signs that state, "Fines double when workers present." The citation must also include a statement that workers were present. (Sections 472.022(e)(2) and 542.404, T.C.)

Citations that are written for offenses that occur in a construction or maintenance work zone when workers are present and the proper signage is in place must contain on its face that workers were present when the offense was committed. (Sections 472.022(d) and 542.404(a), T.C.)

Violations that occur in a construction or maintenance work zone when workers are present are not eligible for a driving safety course or for deferred disposition. (Section 472.022(f), T.C. and Articles 45.051(f)(1) and 45.0511(p)(3), C.C.P.)

E. Accounting

Although fine ranges vary depending on the offense, the Transportation Code requires cities to use fine money collected for all traffic convictions under Title 7 to be used in certain ways. The fines must be allocated to construct and maintain roads, bridges, and culverts or to enforce laws regulating the use of highways by motor vehicles. (Section 542.402(a), T.C.)

Because of this requirement, clerks should keep a separate accounting of Title 7 fines collected to accurately report to the city management how much must be appropriated in the city budget to the required items.

PART 6
COMMONLY COMMITTED TRAFFIC OFFENSES

Some commonly committed traffic offenses in Texas are outlined below.

A. License Plates (Subtitle A)

1. Operation of a Motor Vehicle with Expired License Plate

The most common offense involving license plates is Operation of a Motor Vehicle with Expired License Plate. Section 502.407, T.C., provides that a person commits an offense if, after the fifth working day after the date the registration expires, the person operates on a public highway during a registration period a motor vehicle, trailer, or semi-trailer that has attached to it a license plate for the preceding period; and has not been validated by the attachment of a registration insignia for the registration period in effect.

a. Dismissal

A charge of operating a vehicle with an expired license plate may be dismissed under certain conditions by the judge without a motion from the prosecutor. (Section 502.407(b)(1), T.C.) The defendant must purchase valid registration within 10 working days. In addition, the defendant must show proof of payment of the delinquent fee assessed for registering the vehicle late. (Section 502.407(b)(1)(B), T.C.) If a judge decides to dismiss the charge, the judge may assess up to a $10 administrative fee.

b. Penalty

If a defendant is convicted of operating a vehicle with an expired license plate, the offense is punishable by a fine not to exceed $200.

2. Wrong, Fictitious, Altered, or Obscured License Plate

Section 502.409, T.C., provides that a person commits an offense if the person attaches to or displays on a motor vehicle a number plate or registration insignia that:

- is assigned to a different motor vehicle;
- is assigned to the vehicle under any other motor vehicle law other than by the Texas Department of Transportation;
- is assigned for a registration period other than the registration period in effect;
- is fictitious;
- has letters, numbers, or other identification marks that because of blurring matter are not plainly visible at all times during daylight;
- has attached an illuminated device or a sticker, decal, or other insignia that is not authorized by law and that interferes with the readability of the letters or numbers on the plate or the readability of the name of the state in which the vehicle is registered; or
- has a coating, covering, or protective material that distort angular visibility or detectability, or alters or obscures the letters or numbers on the plate, the color of the plate, or another original design feature of the plate.

a. Penalty

If the plate or registration insignia is fictitious, the offense is a Class B misdemeanor. The other offenses in the above list are misdemeanors punishable by a fine of not more than $200, unless it is shown at the trial of the offense that the owner knowingly altered or made illegible the letters, numbers, and other identification marks, in which case the offense is a Class B misdemeanor. Class B misdemeanors include confinement in jail and are not handled by municipal courts.

b. Dismissal

There is no provision that allows the judge discretion to dismiss these charges. The judge, however, can grant deferred disposition under Article 45.051, C.C.P. and if the defendant complies with the conditions of the deferred, the judge must dismiss the case.

B. Driver's License (Subtitle B)

1. Failure to Carry and Exhibit

A person operating a motor vehicle on a highway must hold a valid driver's license that is appropriate for the type of vehicle operated. Motor vehicle operators must display the license on the demand of a magistrate, court officer, or peace officer. (Section 521.025, T.C.)

a. Defense

If a person is charged with failing to carry and exhibit a driver's license, it is a defense to the prosecution if the person produces in court a driver's license appropriate for the type of vehicle operated and valid at the time the citation was issued. The court may not charge a dismissal fee when dismissing this charge.

b. Penalty

If the person did not actually have a valid driver's license at the time he or she committed the offense, the penalty for a:

- first time offense is a fine not to exceed $200;
- second conviction within one year after the date of the first conviction is a fine of not less than $25 or more than $200;
- third or subsequent conviction within one year after the date of the second conviction is a fine of not less than $25 or more than $500, or confinement in the county jail for not less than 72 hours or more than six months, or both the fine and confinement.

2. Expired Driver's License

A person who operates a vehicle on a highway in Texas is required to hold a driver's license. (Section 521.021, T.C.) A driver's license expires on the first birthday of the license holder occurring after the sixth anniversary of the date of the application. (Section 521.271, T.C.)

a. Dismissal

An expired driver's license charge may be dismissed by the judge if the defendant renews the license within 10 working days. (Section 521.026, T.C.) The Transportation Code does not state whether the 10-day period is from the date of license expiration or the date of the citation. Most courts have interpreted this to mean the date of the citation. The law is also permissive with the judge. This means the judge is not required to dismiss the ticket. He or she may choose not to dismiss it and let it be handled as any other citation. If the judge dismisses the charge, the judge may assess a $10 fee.

b. Penalty

If a person is convicted of the offense of operating a vehicle with an expired driver's license, the penalty is a fine not to exceed $200. (Section 521.461, T.C.)

3. Commercial Driver's License

A person may not drive a commercial motor vehicle unless he or she has in the person's immediate possession a commercial driver's license appropriate for the class of vehicle being driven and is not disqualified or subject to an out-of-service order. (Section 522.011, T.C.)

a. Defense

It is a defense to the prosecution if the person produces in court a commercial driver's license that was appropriate for the class of vehicle being driven and was valid when the offense was committed. (Section 522.011, T.C.)

b. Penalty

If a person is convicted of failure to have in his or her possession a valid commercial driver's license, the penalty is a Class C misdemeanor, which means that the fine is not more than $500.

C. Seat Belts and Child Safety Seats (Subtitle C)

The purpose of being required to secure children in child safety seat systems or safety belts along with adults while in motor vehicles is for the express purpose of reducing the harm to children being transported and to reduce the risk of harm to passengers in a motor vehicle. To this end, the Legislature created the safety belt and child safety seat system law.

Adults are required to be secured by a safety belt and children must be secured in child safety seats while being transported in a passenger vehicle. "Passenger vehicle" is defined as a passenger car, light truck, sport utility vehicle, truck, or truck tractor. (Section 545.412(f)(2), T.C.) Section 541.201, T.C., provides the following definitions for the above list of vehicles:

- "Passenger car" means a motor vehicle, other than a motorcycle, used to transport persons and designed to accommodate 10 or fewer passengers, including the operator.
- "Light truck" means a truck, including a pickup truck, panel delivery truck, or carryall truck, that has a manufacturer's carrying capacity of 2,000 pounds or less.

- Since "sport utility vehicle" is not specifically defined, look to the definition of passenger vehicle.
- "Truck" means a motor vehicle designed, used, or maintained primarily to transport property.
- "Truck tractor" means a motor vehicle designed and used primarily to draw another vehicle, but not constructed to carry a load other than a part of the weight of the other vehicle and its load.
- "Motor vehicle" means a self-propelled vehicle or a vehicle that is propelled by electric power from overhead trolley wires.

Section 545.412(f)(3) and (4) defines the terms "safety belt" and "secured." Both definitions apply also to Section 545.413. "Safety belt" means a lap belt and any shoulder straps included as original equipment on or added to a vehicle. "Secured" means using the lap belt and any shoulder straps according to the instruction of the manufacturer of the vehicle if the belt is original equipment, or of the manufacturer of the safety belt if the belt has been added to the vehicle. Because the definition of secured requires the use of the shoulder harness along with the lap belt, if a person is not properly secured, he or she could be charged with not wearing a safety belt.

Child passenger safety seat system means an infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration. Children must be secured in a child passenger safety seat system according to the instructions of the manufacturer of the safety seat system.

For more information, refer to Appendix A and Appendix B.

1. Safety Belts

The operator (driver) of a passenger vehicle must secure himself or herself with a safety belt. If a passenger is at least four years of age and at least 36 inches in height and in the front seat, the passenger must be secured with a safety belt. If a passengers is at least four years of age and at least 36 inches in height and younger than 17 years of age is occupying a back seat, the passenger must be secured by a safety belt. It is an exception if the child was occupying a seat that was not equipped with a safety belt. A passenger who is at least 17 years of age and sitting in the back seat of a vehicle is not required to be secured by a safety belt. (Section 545.413, T.C.)

Section 545.413 provides that a person commits an offense if the person is at least 15 years of age, occupies a front seat that is equipped with a safety belt, and is not secured by the safety belt. This rule includes the driver and passengers. A peace officer can charge the driver for not wearing a safety belt and for not having a passenger in the front seat who is at least 15 and younger than 17 years of age not secured in a safety belt. If the front-seat passenger is at least 15, the passenger can also be charged with not being secured by a safety belt.

a. Defense

There are several defenses to the prosecution. They include the person who:

- possesses a written statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- presents to the court, not later than the 10th day after the date of the offense, a statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- is employed by the United States Postal Service and is performing a duty for that agency that requires the operator to service postal boxes from a vehicle or that requires frequent entry into and exit from a vehicle;
- is engaged in the actual delivery of newspapers from a vehicle or is performing newspaper delivery duties that require frequent entry into and exit from a vehicle;
- is employed by a public or private utility company and is engaged in the reading of meters or performing a similar duty for that company requiring the operator to frequently enter into and exit from a vehicle; or
- is operating a commercial vehicle registered as a farm vehicle under the provisions of Section 502.163, T.C. that does not have a gross weight, registered weight, or gross weight rating of 48,000 pounds or more. (Section 502.163, T.C., provides for a registration fee for commercial motor vehicle used primarily for farm purposes.)

b. Driving Safety Course

If a person charged with an offense under Section 545.413 requests and is eligible to take a driving safety course under Article 45.0511, C.C.P., the court must require a special driving safety course that includes four hours of instruction about the effectiveness of child passenger safety seat systems and seat belts. (Sections 545.412(g) and 545.413(i), T.C.) If the defendant fulfills the DSC course requirement, the court must dismiss the charge and report the date of completion of the course to the Texas Department of Public Safety as with any completion of a driving safety course.

c. Penalty

The penalty for a driver or passenger not being secured in a safety seat is a fine of not less than $25 or more than $50. The passenger must be occupying a front seat in the vehicle and be at least 15 years of age.

If a driver is charged with not requiring a passenger who is at least four years of age and at least 36 inches in height and younger than 17 years of age to ride in the vehicle without being secured by a child passenger safety seat system or a safety belt, as applicable, the fine is not less than $100 or more than $200.

2. Child Passenger Safety Seat Systems

Section 545.412 provides that the operator of a passenger vehicle commits an offense if he or she transports a child who is younger than four years of age or less than 36 inches in height

and does not have the child secured in a child passenger safety seat system. See the definition of "passenger vehicle" under Seat Belts and Child Safety Seats.

a. Exceptions

Exceptions to transporting a child in a child safety seat system include:

- operating a vehicle transporting passengers for hire; or
- transporting a child in a vehicle in which all seating positions equipped with child passenger safety seat systems or safety belts are occupied.

b. Driving Safety Course

If a person charged with an offense under Section 545.412 requests and is eligible to take a driving safety course under Article 45.0511, C.C.P., the court must require a special driving safety course that includes four hours of instruction about the effectiveness of child passenger safety seat systems and seat belts. (Sections 545.412(g) and 545.413(i), T.C.) If the defendant fulfills the DSC course requirement, the court must dismiss the charge and report the date of completion of the course to the Texas Department of Public Safety as with any completion of a driving safety course.

c. Penalty

The operator (driver) of the vehicle is the person who is responsible for having a child in a child passenger safety seat system and hence, is the person who is charged with the crime. The penalty is a minimum fine of $100 with a maximum of $200. (Sections 545.412(b) and 545.413(d), T.C.)

d. Fines Remitted to State

The city is required to remit to the state half of the fines collected for allowing a child to ride and not be secured by a child passenger safety seat system or a safety belt. The city must remit the fines at the end of the city's fiscal year each year.

D. Passing a School Bus

An operator (driver) on a highway must, when approaching from either direction a school bus stopped on the highway to receive or discharge a student, stop before reaching the school bus and may not proceed until the school bus resumes motion. (Section 545.066, T.C.) An operator on a highway having separate roadways is not required to stop for a school bus that is on a different roadway, or if on a controlled-access highway for a school bus that is stopped in a loading zone that is a part of or adjacent to the highway and where pedestrians are not permitted to cross the roadway. A highway is considered to have separate roadways only if the highway has roadways separated by an intervening space on which operation of vehicles is not permitted, a physical barrier, or a clearly indicated dividing section constructed to impede vehicle traffic. A highway is not considered to have separate roadways if the highway has roadways separated only by a left turn lane.

1. Dismissal

A person convicted a passing a school bus is not eligible to take a driving safety course to have the charge dismissed. (Article 45.0511(p), C.C.P.)

The court, however, may grant deferred disposition if the court considers it is in the best interest of justice and require a driving safety course as a term of the deferral. If the defendant completes the terms of the deferral, the court must dismiss the charge. In this instance, the court does not report the dismissal to the Texas Department of Public Safety.

2. Penalty

a. Fine Range

Passing a school bus has a very high fine range. For a first conviction, the minimum fine is $200 and the maximum fine is $1,000. (Section 545.066, T.C.) (Note: Although the penalty for passing a school bus is a maximum of $1000, the offense is still a Class C misdemeanor. Section 12.41 of the Penal Code provides that any fine-only offense outside of the Penal Code is a Class C misdemeanor.)

If a defendant causes bodily injury when passing a school bus, the offense becomes a Class A misdemeanor. If the person is convicted a second time for causing bodily injury when passing a school bus loading or unloading children, the offense becomes a state jail felony.

b. Driver's License Suspension

When a defendant is convicted of a second or subsequent offense, the court may order the defendant's driver's license suspended for a period of time not to exceed six months. (Section 543.066(d), T.C.)

E. Inspection Certificate (Subtitle C)

Motor vehicles registered in this state must display a current and appropriate inspection certificate. After the fifth day after the date of expiration of the period designated for inspection, a person may not legally operate a motor vehicle registered in this state.

1. Defense

It is a defense to the prosecution that an inspection certificate for the vehicle is in effect at the time of the arrest. (Section 548.602, T.C.)

2. Dismissal

If the defendant did not have a valid inspection, under certain conditions, the judge must dismiss the charge and under other conditions, the judge has discretion to dismiss. If the inspection certificate is expired for less than 60 days and the defendant obtains a valid inspection certificate within 10 working days, the court must dismiss the charge and require a $10 fee. If an inspection certificate is expired for more than 60 days, the court may dismiss the charge. There is no provision in the statute to assess a fee under the discretionary provision. The statute defines working day to mean any day other than a Saturday, a Sunday, or a holiday when county offices are closed. (Section 548.605, T.C.)

3. Penalty

A person convicted of the offense of failure to display a current and appropriate inspection certificate is a fine not to exceed $200. (Section 548.604, T.C.)

F. Financial Responsibility (Subtitle D)

It is an offense to operate a motor vehicle in Texas without some type of financial responsibility. (Section 601.051, T.C.) This means that a person who is driving and causes an accident must be able to pay for damages or injuries to another person in the accident. When a person is involved in an accident or is stopped by a peace officer, the person is required to present proof of financial responsibility. (Section 601.053, T.C.) Peace officers may issue citations to persons who fail to present proof. Most commonly this offense is called "no insurance" because liability insurance is the most common way to fulfill the requirement of financial responsibility. (Section 601.071, T.C.)

Since the law may be complied with in different ways, the statute gives guidance as to what proof of financial responsibility is acceptable and includes the following:

- a vehicle liability insurance policy,
- an insurance binder,
- a surety bond certificate,
- a certificate of deposit with the comptroller,
- a certificate of deposit with the county judge, or
- a certificate of self-insurance. (Section 601.053, T.C.)

Chapter 601, T.C., generally provides the requirements for persons to maintain financial responsibility for the motor vehicles that they operate. Section 601.051, T.C., provides that every person who operates a motor vehicle must have financial responsibility established for the vehicle through:

- a motor vehicle liability insurance policy;
- a surety bond filed with DPS (The bond is a lien in favor of the state on the real property described in the bond. The lien exists in favor of a person who holds a final judgment against the person.);
- a deposit in the amount of $55,000 with the State Comptroller (It can be in cash or securities.);
- a deposit in the amount of $55,000 with the county judge of the county in which the motor vehicle is registered (It must be made in cash or cashier's check.); or
- self-insurance (A person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by DPS. The person must have the ability to pay judgments obtained against him or her.).

Section 601.007, T.C., provides that Chapter 601 does not apply to:

- government vehicles (The vehicle must be owned by the United States, State, or political subdivision, operated by an officer, agent, or employee of the government and be used in the course of employment.);
- tow trucks;
- motor carriers; and
- vehicles transporting persons or cargo.

The above listed vehicles must maintain liability insurance in an amount set by DPS that does not exceed the amount required for a motor carrier under a federal regulation adopted under 49 U.S.C. Section 13906(a)(1). (Section 643.101, T.C.)

Section 601.076, T.C. requires an owner's insurance policy to:

- cover each motor vehicle for which coverage is to be granted under the policy; and
- pay on behalf of the named insured or another person who, as insured, used a covered motor vehicle with the express or implied permission of the named insured.

Section 601.077, T.C., requires the owner's insurance policy to pay, on behalf of the named insured, amounts the insured becomes obligated to pay as damages arising out of the use by the insured of a motor vehicle that the insured does not own.

1. Exceptions

There are exceptions to the financial responsibility law. Vehicles that do not have to be covered with some type of financial responsibility include:

- antique collectables:
  - must be at least 25 years old or a former military vehicle,
  - used only for exhibitions, club activities, parades, and other functions of public interest and not used for regular transportation, and
  - the owner must have an affidavit on file with DPS stating that the vehicle is a collector's item and used only for exhibition purposes;
- golf carts; and
- volunteer fire department vehicles (vehicle must be registered in the name of the volunteer fire department).

2. Defense

There are legal defenses to the financial responsibility law. The first and most obvious is that the person has insurance or other proof of coverage. (Section 601.193, T.C.) The offense is for not having a form of financial responsibility, not for failing to present proof to a peace officer. Therefore, having the proper coverage at the time of the alleged violation is a defense. Purchasing insurance after the citation is issued is not a defense.

Another defense is for mechanics. If a motor vehicle is in the possession of a person for the sole purpose to effect repairs on the vehicle, the individual charged has a defense to the charge of failing to maintain financial responsibility. (Section 601.194, T.C.) This is only valid if the mechanic is working on someone else's car. (Section 601.194(b), T.C.) A person cannot use this defense when repairing his or her own car.

3. Dismissal

If a person charged with failure to maintain financial responsibility or no insurance produces a motor vehicle insurance policy or certificate of self-insurance to the court that was valid at the time of the citation, the court is required to dismiss the charge after it verifies the document. (Section 601.193, T.C.) Usually, the defendant brings the proof to the court facility and the clerk makes a copy to present to the judge. Sometimes the evidence is clearly acceptable, but other proof may raise a suspicion of authenticity. The statute does not provide procedures for how the court verifies the document or who is to do the verification. Some courts have the clerk call the insurance company to verify the coverage. Others have the prosecutor verify the document since the evidence is a defense to the prosecution. The substantiation, however, must be done by a person other than the judge. The judge should not become involved until it is time to hear evidence regarding the case. If the judge verifies the evidence, the judge might be considered biased and is now a witness in the case. This would be a violation of the Code of Judicial Conduct. Clerks should work with their judge and prosecutor to establish a procedure for handling these types of cases. In a situation where a document cannot be verified, the defendant should be set for trial.

4. Penalty

The fine for a financial responsibility charge is higher for than normal traffic violations. A first offense carries a fine of $175 to $350. (Section 601.191(c), T.C.) On the first offense, the judge has the authority to lower the fine below the $175 minimum, if the judge finds the person convicted is economically unable to pay the fine. (Section 601.191(d), T.C.) This authority to lower the fine below the minimum does not apply to subsequent offenses.

A second offense carries a minimum fine of $350 with a possible fine up to $1000. (Section 601.191(c), T.C.) On the second offense, courts must also order the sheriff to impound the defendant's vehicle, if the defendant owns the vehicle. To charge a defendant with a second or subsequent offense, it must be pleaded as such. Therefore, if the clerk uncovers information that the case may be a second or subsequent offense, it should be turned over to the prosecutor for handling. It is the prosecutor's responsibility to review the case and file it as a subsequent offense if he or she wishes.

G. Motorcycle Protective Headgear (Subtitle G)

Persons who operate or ride on a motorcycle must wear protective headgear, commonly called a helmet.

1. Exceptions

There are, however, some exceptions to this requirement and include:

- if the person is at least 21 years of age and has successfully completed a motorcycle operator training and safety course; or
- if the person is covered with at least $10,000 in medical benefits for injuries that may be incurred as a result of operating or riding on a motorcycle. (Section 661.003, T.C.)

If motorcycle operators or their passengers can produce evidence to an officer who has lawfully stopped them that they either are at least 21 years of age and have successfully completed the training and safety course or that they have the required medical insurance, peace officers are prohibited from issuing a citation for not wearing a helmet. (Section 661.003(c), T.C.)

2. Penalty

Persons convicted of not wearing motorcycle protective headgear may be fined in an amount of $10 to $50. (Section 661.003(h), T.C.)

H. Privileged (Handicapped) Parking (Subtitle H)

What is known as handicapped parking is actually called privileged parking in the Transportation Code. (Chapter 681, T.C.) To receive privileged parking, a person must be legally blind or have substantial mobility problems. A person with substantial mobility problems includes someone who cannot walk over 200 feet without stopping; must use a brace, crutch, cane, prosthetic device, or wheelchair; has severe lung disease; or uses portable oxygen. A person who has a severe cardiac condition, has an arthritic, neurological, or orthopedic condition which limits his or her ability to walk, or has a debilitating condition which, in the opinion of a doctor, limits his or her ability to walk is also considered to have severe mobility problems. (Section 681.001, T.C.)

A person who is disabled must apply to the tax assessor-collector for a disabled parking permit. When approved, the person is given either two window placards or a license tag and one window placard. (Section 681.003, T.C.) These tags or placards allow parking in privileged parking spaces for an unlimited amount of time. (Section 681.006(a), T.C.) Persons with privileged parking tags or placards may also park at parking meters free of charge. (Section 681.006(b), T.C.) There is an exception to parking free of charge. Persons lawfully parked in a parking garage or lot within the boundaries of a municipal airport must still pay the parking fee. (Section 681.006(c), T.C.) A governmental unit may provide by ordinance or order that persons parking in specially designated privileged parking spaces in a parking garage, a lot, or a space may be exempt from paying a fee or penalty imposed by the governmental unit for parking in those spaces. (Section 681.006(e), T.C.)

Each governmental building is required to have privileged parking spaces. In addition local, state, and federal law requires many private businesses to designate privileged parking spaces. (Section 681.009(c), T.C.)

Enforcement of privileged parking can be carried out by three groups. Obviously, peace officers may write parking tickets. Also allowed to enforce these regulations are security guards of private businesses. (Section 681.010(b), T.C.) In addition, cities may appoint persons to write parking citations. The person must take an oath of office and complete a training program. (Section 681.0101, T.C.) Under this provision, many cities are designating disabled persons or other citizens to assist in enforcement.

It is an offense to park a vehicle not bearing either the placard or tag in a space designated as privileged parking. (Section 681.011(b), T.C.) Furthermore, it is an offense to park a vehicle with a tag or placard in a disabled space if, at the time of parking, it is not being used to transport a person with a disability. (Section 681.011(a), T.C.) Parking violations may also be charged against persons who block ramps for the disabled. (Section 681.011(c), T.C.) In addition, persons who have a placard and lend it to someone who is not mobility impaired may also be charged. (Section 681.011(d), T.C.)

1. Dismissal

Someone convicted of a privileged parking offense does not have the right to take a driving safety course to have the offense dismissed. The judge may, however, grant deferred disposition under Article 45.051, C.C.P.

2. Penalty

Privileged or handicapped parking is taken very seriously by the Texas Legislature. They passed some tough laws with severe penalties. A person convicted of a handicapped parking offense faces high fines, which escalate with subsequent offenses.

Offense	Penalty	Cite
First offense	Minimum: $250 Maximum: $500	Section 681.011(g), T.C.
Second offense	Minimum: $300 Maximum: $600	Section 681.011(h), T.C.
Third offense	Minimum: $300 Maximum: $400 Not less than 10 or more than 20 hours of community service	
Fourth offense	Minimum: $500 Maximum: $1,000 Not less than 20 or more than 50 hours of community service	
Fifth offense	Mandatory: $1,000 50 hours of community service	Section 681.011(i),(j) and (k), T.C.

PART 7
EXCESS FINES LAW

The excess fines law is found in Transportation Code, Subtitle C, Section 542.402(b). It only applies to cities with a population of less than 5,000 persons. The Legislature enacted the law to prevent what they believed were "speed traps." The law basically keeps small cities from collecting a large portion of their budget from traffic fines.

The law reads, "in each fiscal year, a municipality having a population of less than 5,000 may retain, from fines collected from violations of this title and from special expenses collected under Article 45.051, Code of Criminal Procedure in cases in which a violation of this title is alleged, an amount equal to 30 percent of the municipality's revenue for the preceding fiscal year from all sources, other than federal funds and bond proceeds. After a municipality has retained that amount, the municipality must send to the state comptroller any portion of a fine or special expense collected that exceeds one dollar." (Section 542.402(b), Article I (a), T.C.)

In more simple terms, the city's previous year revenues are added up. The city may take that figure less federal funds and bond proceeds and collect up to 30 percent of that amount in fines from prosecutions of violations of offenses in Title 7 of the Transportation Code. Also included in the 30 percent revenue cap are the special expense fees collected under Article 45.0511, C.C.P. for offenses charged under Title 7. After 30 percent, the city may keep only one dollar from each violation of those offenses and must send all excess fines and special expense fees to the state.

The city must also report to the state when the fines and special expense fees for Title 7 reach 20 percent of the budget. If the report is not filed and the state audits the court, the city must pay for the audit.

PART 8
QUOTAS

Section 720.002, T.C. is titled *Prohibition on Traffic-Offense Quotas*. It prohibits cities from establishing or maintaining a plan to evaluate, promote, compensate, or discipline peace officers according to a predetermined or specified number of any type or combination of types of traffic citations (quotas). (Section 702.002(a)(1), T.C.) This same prohibition also regards judges in that cities may not evaluate, promote, compensate, or discipline a judge according to the amount of money the judge collects from persons convicted of a traffic offense. (Section 702.002(a)(2), T.C.)

However, cities may consider the source and amount of money collected from a municipal court when evaluating the performance of the judge. Also, cities may obtain budgetary information from the municipal court including an estimate of the amount of money the court anticipates will be collected in a budget year. (Section 702.002 (c) and (d), T.C.)

A violation of Chapter 702, T.C., by an elected official, is misconduct and a ground for removal from office. (Section 702.002(e), T.C.)

PART 9
DRIVING SAFETY COURSES (DOC)
MOTORCYCLE OPERATOR COURSES (MOC)

A. Application

1. Offenses to Which DSC/MOC Applies

Article 45.0511, C.C.P., is now entitled "Driving Safety Course (DSC) or Motorcycle Operator Course (MOC) Dismissal." DSC and MOC only applies to an offense that in the jurisdiction of the justice or municipal court and involves the operation of a motor vehicle that is defined by Section 472.022, T.C.; Subtitle C, Title 7, T.C.; and Section 729.001(a)(3), T.C.

2. Exceptions

Exceptions to the application of Article 45.0511 include:

- Persons with a commercial driver's license are excluded from taking a driving safety course, including when the person is driving his or her own personal vehicle;
- An offense committed in a construction or maintenance zone when workers are present;
- Persons who are alleged to have been speeding 25 mph or more over the speed limit;
- Persons charged with passing a school bus loading or unloading children;
- Persons charged with leaving the scene of an accident after causing damage to a vehicle; and
- Persons charged with leaving the scene of an accident that fail to give information and render aid.

B. Course Requirements

1. DSC

If the offense was committed in a passenger car or a pickup truck, the judge must require the defendant to complete a driving safety course approved by the Texas Education Agency. Court costs statutes require the defendant to pay all applicable court costs when the case is deferred; the court may also require a $10 administrative fee is the request if made on or before the answer date on the citation.

2. MOC

If the offense was committed on a motorcycle, the judge must require a motorcycle operator course under the motorcycle operator training and safety program approved by the Texas Department of Public Safety.

3. Driving Safety Course—Special Safety Belt Course

If the offense charged is under the Section 545.412 and 545.413, T.C. regarding securing children in child safety seat systems or safety belts or securing the driver and front seat passenger who is at least age 15 with a seat belt, defendants have a right to request a driving safety course. The court, after determining if the defendant is eligible, must require a driving safety course that contains four hours of instruction on the effectiveness and safety of using a child safety seat system and seat belts. (Sections 545.412(g) and 545.413(i), T.C.) If the defendant completes the course, the court must dismiss the case and report the completion date of the driving safety course for inclusion in the defendant's driving record.

C. Eligibility and Requirements

To be eligible for a DSC or a MOC, the defendant:

- May not have completed an approved driving safety course or motorcycle operator training course, as appropriate, within the 12 months preceding the date of the offense;
- Must enter a plea of guilty or nolo contendere on or before the answer date on the citation and present the court in person, by counsel, or by certified mail (postmarked on or before due date) a request to take the course;
- Must present the court with a valid Texas driver's license or permit; and
- Must provide the court evidence of financial responsibility.

D. Course Requirements

After the defendant enters a plea and makes the request for the course, the court must enter judgment on the plea at the time the plea is made, defer imposition of the judgment, and allow the defendant 90 days to successfully complete the approved course and present to the court on or before the 90th day:

- a certificate of completion of the DOC or MOC;
- the defendant's driving record as maintained by the Department of Public Safety showing that the defendant had not completed an approved driving safety course or motorcycle operator training course, as applicable, within the 12 months preceding the date of the offense; and
- an affidavit stating that the defendant was not taking a driving safety course or motorcycle operator training course, as applicable.

If a defendant fails to present evidence of all three requirements by the end of the 90 days deferral period, the court may not dismiss the charge.

E. Judge's Discretion before Final Disposition

If a defendant has completed an approved driving safety course or motorcycle operator training course within the 12 months preceding the date of the current offense, the court has discretion to grant a request to take DSC or MOC if the request is made before the final disposition of the case.

F. Costs

1. Mandatory

Court costs statutes require the defendant to pay all applicable court costs when the case is deferred. These costs must be paid up front when the court grants the request for a driving safety course.

2. Judge's Discretion

The court may require a $10 administrative fee if the request if made on or before the answer date on the citation. If the judge allows a defendant to take a driving safety course under the permissive provisions under Article 45.0511(d), C.C.P., the judge may require a fee in an amount not to exceed the maximum amount of the fine for the offense. If the person does not complete the course or present the other required evidence and the fine is imposed, the person is not entitled to a refund of the fee under the mandatory or permissive provisions.

G. Required Evidence at End of 90 Days

Before a court may dismiss a charge when a defendant has requested DSC or MOC, the defendant must present the following to the court on or before the 90th day after the request:

- A uniform certificate of completion of the driving safety course or a verification of completion of the motorcycle operator course;
- His or her driving record as maintained by the Texas Department of Public Safety showing that the defendant had not completed an approved driving safety course or motorcycle operator training course, as applicable, within the 12 months preceding the date of the current offense; and
- An affidavit stating that the defendant was not taking a driving safety course or motorcycle operator course, as applicable, for another case on the ate the request to take the course was made and had not completed such a course that is not shown on the defendant's driving record within the 12 months preceding the date of the offense.

H. Satisfactory Completion

When the defendant presents all the evidence required, the court shall remove the judgment and dismiss the charge.

I. Failure to Complete Course/Submit Evidence of All Requirements

If a person fails to present the court with the required evidence of course completion, copy of driving record as maintained by the Texas Department of Public Safety; and the affidavit, the court shall set a show cause hearing and notify the defendant by mail of the hearing. If the defendant fails to appear for the show cause hearing, the court shall impose the fine. If the person appears and can show good cause for the failure to furnish evidence to the court, the court may allow an extension of time during which the defendant may present the evidence of course completion and other required evidence.

J. Appeal

If the defendant fails to complete the course or fails to submit all the required evidence and the judge subsequently adjudicates the defendant's guilt, the defendant may appeal the conviction if the municipal court is a non-record municipal court. If the defendant does not appeal, the defendant must pay the fine.

K. Reports to the Texas Department of Public Safety

If the defendant completes the DSC or MOC and presents satisfactory evidence of the other requirements and dismisses the charge, the court reports to the Department of Public Safety the fact that the defendant successfully completed a driving safety course or a motorcycle operator training course under Article 45.0511, C.C.P., and the date of completion.

If the defendant fails to complete the course and the offense charged is a traffic offense, the court reports the conviction to the Department of Public Safety.

PART 10
COLLECTIONS

A. Nonresident Violator Compact

Over 40 states in the United States have entered into the Nonresident Violator Compact of 1977. In addition to Texas, the contiguous states of Arkansas, Louisiana, New Mexico, and Oklahoma are members. The member states recognized that a motorist from out of state, who was charged with a traffic offense, was often required to post a bond, detained, or taken directly to court for "trial." They felt these practices were a hardship for motorists and took an undue amount of law enforcement time. (Section 703.002, Article I(a), T.C.) To remedy these problems, the states developed the Nonresident Violator Compact not only to seek compliance with the laws of each state, but also to allow motorists to proceed on their way, thus, better utilizing law enforcement time. (Section 703.002, Article I(b), T.C.)

Basically, the Compact allows an out-of-state motorist accused of a traffic violation to be given a citation instead of being arrested. The law requires the issuing officer to issue a citation to any out-of-state operator who has a driver's license from a Compact state. (Section 703.002, Article III(a), T.C.) The officer or jurisdiction may not require a bond. (Section 703.002, Article III(a), T.C.)

If a motorist fails to comply with the terms of release or the promise to appear, the court must report the failure to comply to the Texas Department of Public Safety. (Section 703.002, Article III(c), T.C.) The court must use a form approved by DPS that includes vital information about the defendant, the court, and the alleged violation. The Department of Public Safety reports the violation and failure to appear to the state that issued the defendant's license to drive. (Section 703.002, Article III(d), T.C.) It is important for the court to promptly forward a report because DPS must transmit the record within six months of the offense or else the other state does not have to suspend the driver's license. (Section 703.002, Article III(f), T.C.)

Once the motorist's home state receives the Department of Public Safety report, the state is required to notify the defendant and initiate a suspension action. (Section 703.002, Article

IV(a), T.C.) If suspension is deemed appropriate under that state's laws, the defendant's driver's license will be suspended until satisfactory evidence of compliance with the traffic citation is provided. (Section 703.002, Article IV(a), T.C.)

The Compact appears to be working very well for those courts willing to use it. It must be remembered, however, that Compact state traffic violators cannot be arrested whether the court chooses to utilize the Compact or not. Also, the ability for the Compact to work for a court depends on the accuracy and speed of reporting violators from other states. Municipal court personnel are encouraged to learn the Nonresident Violator Compact's provisions and use them to their advantage.

B. Contracts

The Transportation Code contains two provisions that permit a city to contract for enforcement of certain offenses when a defendant fails to appear or fails to pay.

Both provisions require a notice to the defendant provided by the officer issuing the citation that tells the defendant of the possibility of the denial of the driver's license renewal or the refusal to register the vehicle.

1. Texas Department of Transportation

One provision says that a home-rule city may contract with a county assessor-collector or the Texas Department of Transportation (TX DOT) to refuse to register a vehicle for failure to appear or failure to pay a fine involving a violation of a traffic law. Traffic law is defined to mean a statute or ordinance that is punishable by a fine not to exceed $200 that regulates the conduct or condition of a person operating a motor vehicle or the condition of a motor vehicle on a street, road, or highway. (Chapter 702, T.C.) The city must notify the TX DOT upon entry of judgment, perfection of an appeal, or dismissal of the charge. There are no provisions for the collection of a fee under this contract.

2. Texas Department of Public Safety

Another provision says that cities may contract with the Texas Department of Public Safety to deny renewal of driver's licenses for persons who fail to appear, fail to pay, or fail to satisfy a judgment in a manner ordered by the court for fine-only offenses. A city that contracts with DPS must collect a $30 administrative fee from the defendant and remit $20 of the fee to the state. (Chapter 706, T.C.)

Part 11
Reports to the Texas Department of Public Safety

A. Information Required to be Maintained by the Courts

Each magistrate or judge of a court not of record and each clerk of a court of record shall keep a record of each case in which a person is charged with a violation of law regulating the operation of vehicles on highways. (Section 543.201, T.C.) The record shall contain the following information:

- the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;
- the registration number of the vehicle involved;
- whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;
- the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver's learner's permit;
- the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;
- whether a search of the vehicle was conducted and whether consent for the search was obtained;
- the plea, the judgment, and whether bail was forfeited;
- the date of the conviction; and
- the amount of the fine or forfeiture.

B. Information Required to be Reported to the Texas Department of Public Safety

Courts are required to report traffic convictions and bail forfeitures on a form or by a data processing method acceptable to the Department of Public Safety. Section 543.202, T.C., requires courts to report to the Texas Department of Public Safety the following information:

- the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;
- the registration number of the vehicle involved;
- whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;
- the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver's learner's permit;
- the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;
- whether a search of the vehicle was conducted and whether consent for the search was obtained;
- the plea, the judgment, and whether bail was forfeited;
- the date of the conviction; and
- the amount of the fine or forfeiture.

C. Time to Report Convictions or Forfeiture of Bail

Courts are required to report the convictions or forfeiture of bail to the Department of Public Safety by the 30th day after the date of the conviction or forfeiture of bail. The report must contain the information noted above. (Section 543.203, T.C.)

D. Reporting Driving Safety Course Dismissals

When a defendant completes a driving safety course and presents to the court all the required evidence, the court is required to dismiss the charge. After the charge is dismissed, the court is required to report to the Texas Department of Public Safety the date of completion of the driving safety course. (Article 54.0511(2) and (3), C.C.P.)

E. Reporting Traffic Case Dismissed under Deferred Disposition

The court is prohibited from submitting a record to the Texas Department of Public Safety of a dismissal of a traffic offense dismissed under deferred disposition, Article 45.051, C.C.P. The Department of Public Safety may not keep a record for which the submission is prohibited. (Section 543.204, T.C.)

F. Failure to Report

If a judicial officer fails to maintain or report the required information timely, the judicial officer may be charged with misconduct in office. This may be grounds for removal from the judicial officer's position. (Section 543.206, T.C.)

CONCLUSION

Traffic law is a mixture of various laws and regulations. In spite of their diversity, they have a common purpose. They attempt to provide safety to citizens who travel on the streets and highways. A responsibility is placed on the courts to know those laws, to educate the public on them, and to promote safer driving through punitive or remedial action. While traffic law is often confusing and sometimes difficult to administer, courts should be depended on to do their part in making Texas roadways safe.

GLOSSARY

Appearance: The formal proceeding by which a defendant submits himself or herself to the jurisdiction of the court. Other than the defendant, only an attorney hired to represent the defendant may appear for the defendant.

Bond Forfeiture: A failure to perform the condition (appearance in court) of the bond. The bond forfeiture process occurs when the defendant fails to appear as promised on the bond. The defendant and/or surety become(s) liable for the payment of the bond as a consequence of failing to appear.

Citation: A written notice to appear issued by a peace officer that may be used as the charging instrument in municipal court.

Commercial Motor Vehicle: A motor vehicle or combination of motor vehicles used to transport passengers or property that: (1) has a gross combination weight rating of 26,001 or more pounds, including a towed unit with a gross vehicle weight rating of more than 10,000 pounds; (2) has a gross vehicle weight rating of 26,001 or more pounds; (3) is designed to transport 16 or more passengers, including the driver; or (4) is transporting hazardous materials and is required to be placarded. (Subtitle B, Section 522.003(5), T.C.)

Conviction: Means the final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere. The result of a criminal trial that ends in a judgment or sentence that the accused is guilty as charged.

Culpable Mental State: A state of mind where the defendant means or intends to commit the offense.

Deferred Disposition: A process where the judge may defer the imposition of the fine and grant probation requiring the defendant to adhere to certain terms. If a defendant successfully completes the terms of probation, the judge is required to dismiss the case.

DIC-21 Form: The Department of Public Safety (DPS) form that is required to be used by the courts to report to DPS convictions of offenses that carry an automatic suspension of driver's license.

DIC-81 Form: The Department of Public Safety (DPS) form used to report to DPS a juvenile's failure to appear in court or failure to pay a judgment. Also used to submit a court order to either suspend the driver's license or keep a minor from obtaining a driver's license for six months if the minor fails to complete an alcohol awareness course.

DL-18 Form: A Department of Public Safety (DPS) form used by the courts to report traffic convictions to DPS.

Excess Fines Law: Found in Transportation Code, Subtitle C, Section 542.402(b). It only applies to cities with a population of less than 5,000 persons. This law was enacted by the Legislature to prevent what they believed were "speed traps." The law basically keeps small cities from collecting a large portion of their budget from fines.

Financial Responsibility: Means the ability to respond in damages for liability for an accident.

Highway: Means the width between the boundary lines of a publicly maintained way any part of which is open to the public for vehicular travel. (Subtitle C, Section 541.302(5), T.C.)

Juvenile: Although there is no legal definition of juvenile, courts usually consider a person under the age of 17 a juvenile.

Minor: In traffic law, a minor is a person who is younger than 17 years of age; in the Alcoholic Beverage Code, a minor is a person who is under 21 years of age.

Misdemeanor: Offenses lower than felonies and generally punishable by fine or imprisonment. Municipal court has jurisdiction over misdemeanors that are fine-only offenses.

Nonresident Violator Compact: An agreement between certain states to provide a means through which the party jurisdictions may participate in a reciprocal program to provide for the fair and impartial treatment of traffic violators operating within party jurisdictions in recognition of the motorists' right of due process and sovereign statute of a party jurisdiction.

Privileged Parking: Commonly called handicapped parking. (Section 681.001, T.C.)

School Crossing Zone: A reduced speed zone designated on a street by a local authority to facilitate safe crossing of the street by children going to or leaving a public or private elementary or secondary school during the time the reduced speed limit applies.

Serious Traffic Violation: Traffic offenses, which when committed by persons with a commercial operators license operating a commercial motor vehicle or their personal vehicle, are considered to be "serious traffic violations." They include: excessive speeding over 15 mph or more; reckless driving; violation of state and local traffic laws other than parking, weight or vehicle defect violations, arising in connection with a fatal accident; improper or erratic lane change; or following too closely. (Section 522.003(25), T.C.)

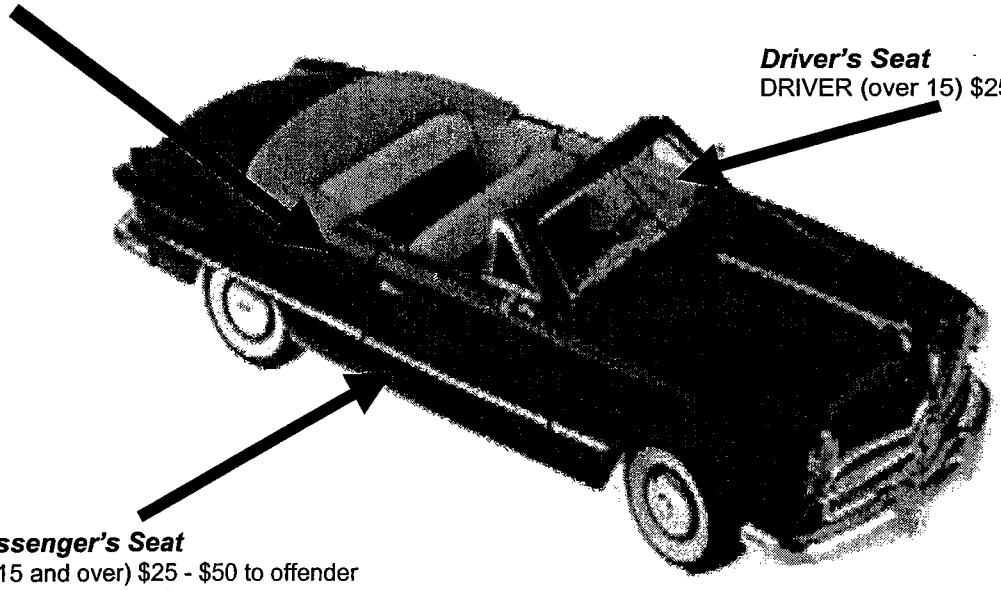
Street: Means the width between the boundary lines of a publicly maintained way any part of which is open to the public for vehicular travel. (Subtitle C, Section 541.302(5), T.C.)

Strict Liability Offenses: Offenses in which the state is not required to prove a culpable mental state. Strict liability for traffic offenses is utilized to raise a driver's safety consciousness.

Violate Promise to Appear: An offense that may be filed by the prosecutor when a defendant fails to appear for an offense charged under Subtitle C, T.C.

APPENDIX A

Back Seat
ADULTS (17 and over) No violation
CHILDREN (4-16) $100 - $200 fine to driver
CHILDREN (up to 4 or less than 36 inches tall) $100 - $200 fine to driver



Driver's Seat
DRIVER (over 15) $25 - $50 fine

Front Passenger's Seat
ADULTS (15 and over) $25 - $50 to offender
CHILDREN (4-16) $100 - $200 to driver
CHILDREN (up to 4 or less than 36 inches tall)
$100 - $200 to driver

Seat Belt Laws
Effective September 1, 2001

Children in safety seats	A child *under 4 years old or less than 36 inches tall* must be restrained in child safety seat in accordance with the manufacturer's instructions.
Child in seat belts	A child *age 4 through 16* must be restrained in a **seat belt** regardless of position in the vehicle.
Pick-up trucks and trailers	A child *under age 18* cannot ride in the open bed of a pick-up truck or trailer on a public road.
Adults in seat belts	A person age 15 or older must be restrained in a seat belt if seated in the front seat.

APPENDIX B

Passenger Safety Seat System and Safety Belt
Effective for Offenses Committed on or after September 1, 2001

Age	Person Responsible	Type of Restraint	Location in vehicle	Penalty	Eligible for Special DSC (emphasizes seatbelts & child safety seat systems)	Eligible for DSC	Eligible for Deferred Disposition
child under age 4 or less than 36 inches	driver	child passenger safety seat system	front and back seats	minimum $100 maximum $200	yes	no	yes
child at least age 4 and under age 17	driver	safety belt	front and back seats	minimum $100 maximum $200	yes	no	yes
at least age 15	person	safety belt	front seat	minimum $25 maximum $50	no	yes (if driver)	yes

Definitions

- Child passenger safety seat system means an infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.
- Passenger vehicle means a passenger car, light truck, sport utility vehicle, truck, or truck tractor. ("Passenger car" means a motor vehicle, other than a motorcycle, used to transport persons and designed to accommodate 10 or fewer passengers, including the operator. "Light truck" means a truck, including a pickup truck, panel delivery truck, or carryall truck, that has a manufacturer's carrying capacity of 2,000 pounds or less. Since "sport utility vehicle" is not specifically defined, look to the definition of passenger vehicle. "Truck" means a motor vehicle designed, used, or maintained primarily to transport property. "Truck tractor" means a motor vehicle designed and used primarily to draw another vehicle but not constructed to carry a load other than a part of the weight of the other vehicle and its load. "Motor vehicle" means a self-propelled vehicle or a vehicle that is propelled by electric power from overhead trolley wires. Section 541.201, T.C.)
- Safety belt means a lap belt and any shoulder straps included as original equipment on or added to a vehicle.
- Secured in connection with use of a safety belt means using the lap belt and any shoulder straps according to the manufacturer of the vehicle, if the safety belt is original equipment; or the manufacturer of the safety belt, if the safety belt has been added to the vehicle.

Section 545.412, T.C. does not apply to:

- A person operating a vehicle transporting passengers for hire;
- A person transporting a child in a vehicle in which all seating positions equipped with child passenger safety seat systems or safety belts are occupied.

Defenses to the prosecution under Section 545.413, T.C.

- The person possesses a written statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- The person presents to the court, not later than the 10^{th} day after the date of the offense, a statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- The person is employed by the United States Postal Service and performs a duty for that agency that requires the operator to service postal boxes from a vehicle or that requires frequent entry into and exit from a vehicle;

- The person is engaged in the actual delivery of newspapers from a vehicle or is performing newspaper delivery duties that require frequent entry into and exit from a vehicle;
- The person is employed by a public or private utility company and is engaged in the reading of meters or performing a similar duty for that company requiring the operator to frequently enter into and exit from a vehicle; or
- The person is operating a commercial vehicle registered as a farm vehicle under the provisions of Section 502.163, T.C. that does not have a gross weight, registered weight, or gross weight rating of 48,000 pounds or more. (Section 502.163, T.C. provides for a fee for commercial motor vehicle used primarily for farm purposes.)

Amount of Due the State

- Fifty percent of the fines for convictions for not securing a child in a passenger safety seat system or a safety belt ($100 to $200 penalty range) must be remitted to the State Comptroller at the end of the city's fiscal year.
- Court costs must be remitted quarterly.

APPENDIX C

COMPARISONS OF DEFERRED OPTIONS

(Effective September 2003)

	Driving Safety Course (DSC) or Motorcycle Operator Course (MOC) Dismissal Procedures Article 45.0511, C.C.P.	Suspension of Sentence and Deferral of Final Disposition Article 45.051, C.C.P.
Application/Use	Applies to the following traffic offenses: • Section 472.022, T.C.; (Obeying Warning Signs) • Subtitle C, Title 7, T.C.; (Rules of the Road) • Section 729.001(a)(3), T.C. (Operation of Motor Vehicle by Minors) Exceptions: • Traffic offenses committed in a construction work maintenance zone when workers are present Sec. 472.022, T.C.; Art. 45.0511(p)(3), C.C.P. • Traffic offenses committed by a person with a commercial driver's license* Art. 45.0511(s), C.C.P.; • passing a school bus loading and unloading children Sec. 545.066, T.C.; • leaving the scene of an accident Secs. 550.022 or 550.023, T.C.; or • speeding 25 mph or more over the limit Art. 45.0511(b)(5), C.C.P. Court must advise person charged with offenses under Subtitle C, Rules of the Road, T.C of right to take course.	Applies to fine-only offenses except: • traffic offenses committed in a construction work maintenance zone when workers present Sec. 472.022, T.C.; Art. 45.051(f)(1), C.C.P. or • traffic offenses committed by a person with a commercial driver's license Art. 45.051(f)(2), C.C.P.
How Often	Defendant may request if the defendant has not had a driving safety course within the 12 months preceding the date of the current offense. Under Subsection (d), the court may grant at any time at court's discretion before final disposition of the case.	Deferred may be granted any time at the judge's discretion.
Plea Required	A plea of guilty or no contest is required when the request is made. Request must be made on or before answer date on citation. Judge has discretion to grant course before final disposition of the case under Subsection (d).	A plea of guilty of nolo contendere or a finding of guilt required.
Proof of Financial Responsibility	Defendants are required to present proof of financial responsibility on themselves (not the vehicle).	NO
State Court Cost Collected	YES Due when request made.	YES Due before deferred disposition granted.
Time Limit	Court defers imposition of the judgment for 90 days. The defendant must take the course and present evidence of completion by the 90th day. Defendant also required to present to the court a copy of his or her driver's license record as maintained by DPS and an affidavit stating that he or she was not taking DSC or MOC at the time of the request nor has he or she taken a course that is not on his or her driver's license record.	Not to exceed 180 days. (1 to 180 days)
Optional Administrative or Special Expense Fee	If defendant makes request on or before answer date, the court may only assess an administrative $10 non-refundable fee. If the judge grants a course before the final disposition of the case under Subsection (d), the court may assess a fee not to exceed the maximum possible penalty for the offense.	OPTIONAL SPECIAL EXPENSE FEE not to exceed the amount of fine assessed at the time the court grants the deferral. Fee collected at the end of the deferral period after the court dismisses the case.
Report to DPS	YES. Report the completion date of the course after the court dismisses the case.	Only report the order of deferred for Alcoholic Beverage Code offenses when deferred is granted.

*The only statute that defines traffic offenses is Section 720.001(f)(2), T.C. 'Traffic offense" means an offense under Chapter 521 (driver's license offenses) or Subtitle C, Rules of the Road Offenses.

COMPARISONS OF DEFERRED OPTIONS

(Effective September 1, 2003)

	Driving Safety Course (DSC) or Motorcycle Operator Course (MOC) Dismissal Procedures Article 45.0511, C.C.P.	Suspension of Sentence and Deferral of Final Disposition Article 45.051, C.C.P.
Other Requirements	Request may be oral or in writing. If mailed, request must be sent certified mail. (Article 45.0511(b)(3), C.C.P.) When a defendant requests a course on or before the answer date on the citation, the defendant must present evidence of a valid Texas driver's license or permit. On or before the 90th day after the request the defendant must present: 1. Evidence of course completion; 2. A copy of his or her driving record as maintained by DPS; and 3. An affidavit stating that he or she was not taking a course at the time of request for the current offense nor had he or she taken a course that was not yet on his or her driving record within the 12 months preceding the current offense.	Requirements: Judge <u>may</u> require the following: 1. Post bond in the amount of the fine assessed to secure payment of the fine; 2. Pay restitution to the victim of the offense in an amount not to exceed the fine assessed; 3. Submit to professional counseling; 4. Submit to diagnostic testing for alcohol or controlled substance or drug; 5. Submit to psychosocial assessment; 6. Participate in an alcohol or drug abuse treatment or education program; 7. Pay the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs; 8. Complete DSC or other course as directed by the judge; 9. Present to the court satisfactory evidence of compliance with the terms imposed by the judge; and 10. Comply with any other reasonable condition. Requirements - judge <u>must</u>: For Alcoholic Beverage Code Offenses and the offense of Public Intoxication (Sec. 49.02(e), P.C., defendant under the age of 21), court must require an alcohol awareness course. Sec. 106.115(a), A.B.C. For Alcoholic Beverage Code offenses, except DUI, and the offense of Public Intoxication (Sec. 49.02(e), P.C., defendant under the age of 21), court must require community service. Sec. 106.071(d), A.B.C. **1st offense**: eight to 12 hours **2nd offense**: 20 to 40 hours.
Satisfactory Completion	Judge shall remove the judgment and dismiss the case; the dismissal must be noted in the docket.	Judge shall dismiss and note in docket that complaint is dismissed.
Failure to Complete	If defendant fails to furnish the evidence of course completion, a copy of his or her driving record as maintained by DPS that shows that he or she had not taken DSC or MOC within the 12 months preceding the date of offense, and the affidavit, the court shall set a show cause hearing and notify the person by mail. At the hearing the judge may, on a showing of good cause, allow the defendant time to present the uniform certificate of course completion. If the court does not grant more time, the defendant may pay the fine or appeal the case. If a defendant fails to appear at the show cause hearing, the court may issue a capias pro fine.	If defendant fails to comply with terms of the deferral, the judge enters judgment and imposes the fine. The judge may reduce fine previously assessed. The court must also report traffic convictions to DPS.
Appeal	The defendant may appeal after judge imposes the judgment.	If defendant fails to complete the terms and after the judge enters the judgment and imposes the fine, the defendant may appeal.

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THE ADJUDICATION OF JUVENILES IN MUNICIPAL COURT

Presented by

Deanna Burnett
Municipal Judge
Carrollton

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

1. Process juvenile and minor offenders accused of Transportation Code, Alcoholic Beverage Code, and other fine-only misdemeanors.
2. Identify procedural issues specific to juvenile cases.
3. Utilize transfer procedures to juvenile court.

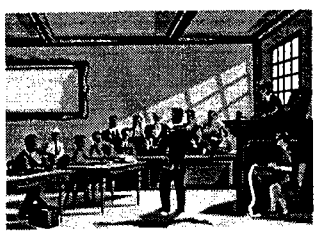
Processing Juveniles in Municipal Court



Objectives

- Jurisdiction
- Taking juveniles into custody
- Chapter 45 of the Code of Criminal Procedure
- Dispositional powers and procedures
- Court records and expunctions
- School attendance
- Alcohol violations
- Tobacco violations

Jurisdiction in Juvenile Cases



Jurisdiction in Juvenile Cases

- "Fine only" misdemeanors
- Definition: an offense that is punishable by fine and such sanctions, if any, as authorized by statute not consisting of confinement in jail or imprisonment

Jurisdiction in Juvenile Cases

Exception to Jurisdiction

Public intoxication of a juvenile (under 17)

Jurisdiction in Juvenile Cases

Primary source of juvenile related criminal violations

- Alcoholic Beverage Code
- Education Code
- Health and Safety Code
- Penal Code
- Transportation Code

Jurisdiction in Juvenile Cases

"Child", "Minor", "Juvenile"
Terms defined by the various codes

- Family code defines child as age 10 to 16
- Education code defines child as age 6 (or younger than 6 if child has previously been enrolled in 1st grade) to 18
- Transportation code defines minor as under the age of 17
- Alcoholic beverage code defines minor as under the age of 21
- Health and safety code defines minor as under the age of 18

Jurisdiction in Juvenile Cases

Waiver of jurisdiction- Transfer to Juvenile Court

- Discretionary waiver
  - Municipal Court may waive jurisdiction and transfer any juvenile (under 17) case to juvenile court
  - Exceptions: transportation code offenses and tobacco offenses

Jurisdiction in Juvenile Cases

- Mandatory waiver
  - No mandatory waiver if the court has a juvenile case manager
  - No juvenile case manager
    Court must transfer if juvenile has been previously convicted of
    - Two or more prior fine-only offenses other than traffic, public intoxication, or tobacco
    - Two or more violations of a penal ordinance of a political subdivision other than a traffic offense
    - One or more of each of the types of misdemeanors described above

Jurisdiction in Juvenile Cases

- Juvenile Case Manager
  - Requires written consent of city council
  - Provides services in cases before the court dealing with juvenile offenders
  - Can provide the judge with local program availability and information
  - Can monitor compliance with court orders to reduce the number of callback hearings
  - Allows the court to retain jurisdiction of third or fourth offenders
  - Two or more courts may jointly employ a case manager
  - May apply to the criminal justice division of the governor's office for reimbursement of the costs

Jurisdiction in Juvenile Cases

- HB1575

  Allows a Municipality by ordinance to collect a $5 court cost on all convictions to be placed in a "Juvenile Case Manager Fund" to be used exclusively for salary and benefits of a Juvenile Case Manager.

Jurisdiction in Juvenile Cases

- Contempt of a municipal court order
  - Refer to juvenile court
  - Retain jurisdiction and after a hearing hold in contempt
    - Fine up to $500
    - Suspend or deny drivers license until full compliance
      - Must notify DPS of compliance

Taking Juveniles into Custody



Taking juveniles into custody

- Citation vs. Arrest
  - Officer can arrest a juvenile on a fine-only offense
  - Officer can allow the juvenile to sign a promise to appear
  - Juvenile can be charged with Failure to Appear or Violate Written Promise to Appear

Taking Juveniles into Custody

- Processing
  - Can a Municipal Court Judge issue a warrant for the arrest of a juvenile?

Taking Juveniles into Custody

- All juveniles must enter a plea in court
- Not all appear voluntarily
- You can issue a warrant to arrest a juvenile
  - Release to parent
  - Take directly before the court
  - Place of non-secure custody (up to 6 hours)

Taking Juveniles into Custody

- Place of Non-secure Custody
  - Defined as unlocked multipurpose area
  - Lobby, office, or interrogation room
  - No secure detention area
  - Designated by head of law enforcement with custody
  - No handcuffs while in area
  - Must be under continuous visual observation
  - Hold must not last longer than necessary to take before judge or release to parent
  - No hold longer than 6 hours
  - No fingerprints or photographs

Taking Juveniles into Custody

Transfers and referral to juvenile court

- May be taken into custody or detained in a juvenile detention facility
- Transfer- jurisdiction waived and case sent to juvenile court- mandatory or discretionary
- Referral- contempt of a municipal court order
- Know your County procedures – Paper Referrals

Taking Juveniles into Custody

Age 17 at time of offense

- Treat as an adult for arrest purposes

Taking Juveniles into Custody

- Juvenile at time of offense – Now 17 JNA – Juvenile Now Adult
  - Can you issue an "Adult Alias" warrant? No, only a juvenile warrant
  - How can you compel an appearance if the juvenile warrant does not work?

Taking Juveniles into Custody

- Begins with the Citation
  - Citation must contain obligation to provide current address language CCP §45.057(h)

Taking Juveniles into Custody

A child and parent required to appear before the court have an obligation to provide the court in writing with the current address and residence of the child. The obligation does not end when the child reaches age 17. On or before the seventh day after the date the child or parent changes residence, the child or parent shall notify the court of the current address in the manner directed by the court. A violation of this subsection may result in arrest and is a Class C misdemeanor. The obligation to provide notice terminates on discharge and satisfaction of the judgment or final Disposition not requiring a finding of guilt.

Taking Juveniles into Custody

- Juvenile "No Shows" for Court
- Non-custodial (juvenile) Warrant
- Juvenile turns 17 years old becomes a JNA (Juvenile Now Adult)
- Mail notice of continuing obligation to appear to JNA at last known address and docket for a hearing

Taking Juveniles into Custody

Required Warning

"Warning: Court records reveal that before your 17th birthday you were accused of a criminal offense and have failed to make an appearance or enter a plea in this matter. As an adult, you are notified that you have a continuing obligation to appear in this case. Failure to appear as required by this notice may be an additional criminal offense and result in a warrant being issued for your arrest."

Taking Juveniles into Custody

- If JNA appears – Take a plea on the charge
- If JNA "No Shows" – New charge under CCP §45.057(h)
- Recall "juvenile" Warrant
- Issue warrant on this new charge – Defendant is an adult so issue Adult "Alias" Warrant
- JNA arrested
- JNA being held only on Adult FTA charge but you can take pleas on underlying juvenile charge

Taking Juveniles into Custody

- Can you issue an Adult Capias Pro Fine Warrant?
  - Yes, eventually, but you must follow procedure
- Juvenile at time of offense
  - Juvenile appears
  - Enters plea and judgment entered
  - Juvenile defaults

Taking Juveniles into Custody

- First must pursue Juvenile Contempt (CCP §45.050) to compel compliance
  Either
  - Refer to Juvenile Court for contempt if defendant is still a juvenile at time of default
  - Find in contempt
- Juvenile turns 17 – becomes JNA
- Prior to signing Adult Capias Pro Fine Warrant – must make special findings

Taking Juveniles into Custody

- The Defendant is 17 years of age or older
- Warrant is justified based on sophistication and maturity level of Defendant
- Warrant is justified by the criminal record and history of the individual
- There is no reasonable likelihood of bringing about the discharge of the judgment through the use of procedures and services currently available to the court
- The court has proceeded under Article 45.050 to compel the individual to discharge the judgment
- If answer "yes" to all
- Sign Adult Capias Pro Fine Warrant

Chapter 45 CCP

- Answers to questions of procedure
- Forms of Deferrals
  - Deferred disposition
  - Driver safety course
  - Teen court

Chapter 45 CCP

SB1005 – Effective Date 9/1/05

Deferred Disposition

- Defendant is under age 25
- Charge is a moving traffic violation
- Judge shall order as a condition that defendant complete a DSC course
- Defendant's holding a provisional license shall be ordered as a condition that they complete the Department of Public Safety Drivers License Application Examination (even if they have already take the exam)

Chapter 45 CCP

Teen court

- Judge in municipal court takes the plea of guilty or no contest
- Juvenile requests teen court
- Determine whether the case meets teen court requirements for referral
- Collect court costs (may waive)
- $10 fee to court and $10 fee to teen court (optional)
- Before 180th day or within 90 days of teen court hearing juvenile must provide proof of completion
- Hearing - for failing to complete teen court requirement before judgment is entered

Chapter 45 CCP

Community Service

- Same rules apply as for adults
- $50 for 8 hours work
- Can pay balance at any time
- Over 16 hours a week requires finding of no hardship
- Only at a governmental entity or non-profit organization
- Can waive payment of fine and costs if you find community service would be an undue hardship
- Juveniles only- Default
  - Report failure to pay fine to DPS
  - Contempt

General Procedures



General Procedures

Parent's appearance required

- All juvenile (under 17) cases
- Alcoholic Beverage Code offenses- 17 year olds
- Court must summon parent
- Summons must contain warning if parent fails to appear- class C misdemeanor offense
- Definition of "Parent"- person standing in parental relation, a managing conservator or a custodian

General Procedures

Juvenile residing in another county

- Court can allow juvenile to enter plea before a judge in the juvenile's county of residence

General Procedures

Additional Sanctions

- Juvenile non-traffic cases- court may order a wide range of sanctions
- Court may order parents to attend
- Court may order payment of the program up to $100
- Enforceable by contempt

General Procedures

Reports to juvenile court

- Pending non-traffic complaint against a juvenile
- Final dispositions in juvenile cases

General Procedures

Juvenile's failure to appear or failure to pay

- Report to the DPS
- Jailing juveniles
- Violating court order
  - Refer to juvenile court for contempt
  - Fine up to $500
  - Order the suspension or denial of juvenile's drivers license until fully complies

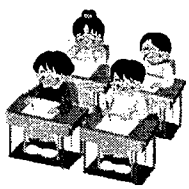
Court Records & Expunctions

- Upon receipt of application to expunge:
  - Determine the type of case the applicant wants to expunge and look to that particular code for requirements
  - Decide if a hearing is necessary
  - Notify necessary agencies or persons of the hearing
  - If no hearing - have someone check records to determine if they have only one conviction
  - Order all those who hold records to expunge the record
  - Remember we do not have jurisdiction over expunctions in traffic cases

Court Records & Expunctions

- SB1426 – Requires the Court to charge a $30.00 fee for each application for Expunction in order to defray the cost of notifying state agencies.

School Attendance



School Attendance

HB1575

- New Affirmative Defense

Absence found by court to be "Involuntary"

Affirmative Defense-Must be proven by the Defendant by a preponderance of the evidence

- School must file complaint within 7 days of student's last absence

If they fail to comply Judge shall dismiss the Complaint

School Attendance

- Failure to attend school
  - Jurisdiction in the city in which the student resides or in which the school sits
  - 10 or more days or parts of days within a 6 month period in the same school year or 3 or more days or parts of days within a 4 week period
  - In addition to fine (up to $500), can order sanctions as in all other juvenile cases

School Attendance

Additional sanctions

to attend school without unexcused absences

a preparatory class for the high school equivalency examination if the Court determines the student is too old to do well in a formal classroom environment

if student is over 16, you may order the exam be taken

Applies to 17 year olds

School Attendance

- Parents Contributing to Truancy (formerly known as Thwarting Compulsory Attendance)

  HB2319- Parent Contributing to Nonattendance
  - Jurisdiction – city where parent resides or where school is located
  - Fine up to $500
  - ½ of fine goes to the school district
  - May order a program in identifying problems and solutions

Alcohol Violations



Alcohol Violations

- Jurisdiction
  - No jurisdiction if defendant is under 17 and charged with public intoxication
  - No jurisdiction if defendant is under 21 and has two prior convictions for same type of offense (DUI counts separately)
  - No jurisdiction if defendant is under 17 and has two prior convictions and the court has no case manager

Alcohol Violations

- Appearance
  - All minors (under 21) must appear in open court to enter plea
  - All defendants under age 18 must have a parent present

Alcohol Violations

- Offenses
  - Purchase of alcohol by minor
  - Attempt to purchase alcohol by minor
  - Consumption of alcohol by minor
  - Possession of alcohol by minor
  - Misrepresentation of age by minor
  - Driving under the influence of alcohol by a minor

Alcohol Violations

- Penalties
  - Fine up to $500
  - Hours of community service
  - Alcohol awareness course (mandatory on first offenses, discretionary on second offenses)
  - Drivers license suspension or denial (except DUI)
    effective the 11th day after judgment; 30 days for first offense, 60 days for second offense

Alcohol Violations

- Deferred disposition
  - To determine whether a minor has been previously convicted of an alcohol offense an order of deferred disposition is considered a conviction

Alcohol Violations

- Failure to complete the Alcohol Awareness Course, court must order DPS to suspend or deny issuance of driver's license for a period not to exceed 180 days
- An order to complete the community service requirement is enforceable by contempt

Alcohol Violations

- Report to the Texas Commission on Alcohol and Drug Abuse (convictions)
  - 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
  - Misrepresentation of age by a minor
  - Driving under the influence of alcohol by a minor

Alcohol Violations

- Report to the Department of Public Safety
  - Convictions of any ABC offense
  - Deferred Dispositions on any ABC offense
  - Acquittals of any Driving under the Influence of Alcohol by a minor

Tobacco Offenses



Tobacco Offenses

- Health and Safety Code
  - Possession of a tobacco product by a minor
  - Minor defined as under 18
  - Do not confuse with the Education Code prohibition of a burning tobacco product on school property

Tobacco Offenses

- Appearance
  - Under 17 must appear with parent
  - 17 year olds handled as adult

Tobacco Offenses

- Offenses
  - Possession of tobacco product by a minor
  - Purchase of tobacco product by a minor
  - Consumption or acceptance of tobacco product by a minor
  - False representation of age by a minor to obtain a tobacco product

Tobacco Offenses

- Waiver of Jurisdiction
  - Cannot waive jurisdiction and transfer case to juvenile court
  - Cannot be counted as previous convictions for the purpose of waiving jurisdiction

Tobacco Offenses

- Procedure
  - Upon conviction, set the fine and suspend "execution" of the fine for 90 days in order for the defendant to attend a tobacco awareness course
  - If no course available in your area, tobacco community service (8 – 12 hours)

Tobacco Offenses

- Collect court costs at the time of plea
- If defendant complies, the case is dismissed and no fine is owed (first case only)
- If previous tobacco case the judgment is imposed and the fine can be reduced up to ½ if defendant completed tobacco awareness course

Tobacco Offenses

- If defendant fails to complete tobacco awareness course after a hearing, judgment is imposed and the previously set fine (up to $250) is executed
- Failure to complete tobacco awareness course court must order DPS to suspend or deny issuance of a drivers license for a period not to exceed 180 days

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TEXAS COURT OF CRIMINAL APPEALS

TEXAS MUNICIPAL COURTS EDUCATION CENTER

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COURT COSTS

Presented by

Rene Henry
Office of Court Administration
Austin

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

1. Determine the proper amount of state court costs and fees that should be assessed and collected on conviction of offenses in municipal court.
2. Describe what constitutes a "conviction" for the purpose of determining when state court costs and fees should be assessed and collected.

MUNICIPAL COURTS

Fiscal 2006

Basic Financial Management

Presented By

Rene Henry
OFFICE OF COURT ADMINISTRATION
512.463.1625

Version to use if HB 11, 2nd Called Session DOES become law

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NAMES, LEGAL REFERENCES, AND ABBREVIATIONS

Cost / Fee	Legal Reference	Abbreviation
Driving Record Fee	Code of Criminal Procedure, Article 45.0511(c-1)	DRF
Juror Reimbursement Fee	Code of Criminal Procedure, Article 102.0045	JRF
Fees for Services of Peace Officers	Code of Criminal Procedure, Article 102.011 Local Government Code, Section 133.104	FSPO
Child Safety Court Costs	Code of Criminal Procedure, Article 102.014	CS
Municipal Court Building Security Fee	Code of Criminal Procedure, Article 102.017	MCBS
Municipal Court Technology Fee	Code of Criminal Procedure, Article 102.0172	MCT
Juvenile Case Manager Court Cost	Code of Criminal Procedure, Article 102.0174	JCM
Consolidated Court Cost	Local Government Code, Section 133.102	CCC
Time Payment Fee	Local Government Code, Section 133.103	TPF
Judicial Support Fee	Local Government Code, Section 133.105	JSF
Local Traffic Court Cost	Transportation Code, Section 542.403	TFC
State Traffic Fine	Transportation Code, Section 542.4031	STF
Failure to Appear, Pay, or Satisfy Judgment Fee	Transportation Code, Section 706.006	FTA

ADMINISTERED BY AND USED FOR

Consolidated Court Cost ($40.00)

- 90 percent sent to the state is allocated based on specified percentages to the following:

Abused Children's Counseling (0.0088 percent)

- money received is deposited in the general revenue fund of the State of Texas

Crime Stoppers Assistance (0.2581 percent)

- administered by the Criminal Justice Division of the Governor's Office and used primarily to fund crime stoppers organizations and in part to operate a toll-free telephone service accessible to persons residing in areas of the state not covered by a crime stoppers organization for reporting information about criminal acts

Breath Alcohol Testing (0.5507 percent)

- administered by the Department of Public Safety and used for the implementation, administration, and maintenance of the state-wide certified breath alcohol testing program

Bill Blackwood Law Enforcement Management Institute (2.1683 percent)

- administered by the Bill Blackwood Law Enforcement Institute of Texas and used for training police management personnel

Law Enforcement Officers Administrative and Continuing Education Accounts (5.0034 percent)

- administered by the Commission on Law Enforcement Officer Standards and Education and used for Commission administrative expenses and training law enforcement personnel

Comprehensive Rehabilitation (5.3218 percent)

- administered by the Texas Rehabilitation Commission and used for providing rehabilitation services to eligible individuals

Operator's and Chauffeur's License (11.1426 percent)

- administered by the Department of Public Safety and used to defray the expenses of administering the Safety Responsibility law

Criminal Justice Planning (12.5537 percent)

- administered by the Criminal Justice Division of the Governor's Office and used for state and local criminal justice projects and for costs of administering funds for the projects

Fair Defense Account (6.0143 percent)

- administered by the Task Force on Indigent Defense for the purpose of implementing Government Code, Chapter 71, Subchapter D

Judicial and Court Personnel Training (4.8362 percent)

- administered by the Court of Criminal Appeals and used for continuing legal education of judges and court personnel

Compensation to Victims of Crime (37.6338 percent)

- administered by the Attorney General's Office and used for compensation to claimants, operation of the Crime Victims Institute, crime victims compensation administration, and victims related services and assistance

Fugitive Apprehension (12.0904 percent)
- administered by the Department of Public Safety and used to pay for the cost of apprehending and incarcerating certain individuals

Juvenile Crime and Delinquency (1.2090 percent)
- administered by Prairie View A&M and used for the establishment and operation of the Center for the Study and Prevention of Juvenile Crime and Delinquency

Correctional Management Institute (1.2090 percent)
- administered by Sam Houston State University and used for the establishment and operation of the Correctional Management Institute of Texas and Criminal Justice Center account

- 10 percent retained locally is administered by the city and used as determined by the city council

Juror Reimbursement Fee ($4.00)
- 90 percent sent to the state is deposited in the Jury Service Fund for juror cost reimbursement to counties

Judicial Support Fee ($4.00)
- 85 percent sent to the state is deposited in the Judicial Fund for the support of court-related purposes

State Traffic Fine ($30.00)
- 95 percent sent to the state is allocated to the following:
  - 67 percent is deposited to the undedicated portion of the general revenue fund of the State of Texas
  - 33 percent is administered by the Texas Department of Health to fund designated trauma facilities, county and regional emergency medical services, and trauma care systems
- 5 percent retained locally is administered by the city and used as determined by the city council

Time Payment Fee ($25.00)
- 50 percent sent to the state is deposited in the general revenue fund of the State of Texas
- 10 percent retained locally is administered by the city and used for the efficiency of judicial administration
- 40 percent retained locally is administered by the city and used as determined by the city council

Arrest and Warrant Fees ($5.00, $50.00)
- amount sent to the state (20 percent when services performed by a state peace officer) is deposited in the general revenue fund of the State of Texas
- amount retained locally (80 percent when services performed by a state peace officer and 100 percent when services performed by a local peace officer) is administered by the city and used as determined by the city council

Failure to Appear, Pay, or Satisfy Judgment Administrative Fee ($30.00)

- two-thirds ($20.00 of each $30.00) sent to the state
  - of each $20.00 sent to the state, $10.00 is administered by the Department of Public Safety and used for implementing the Failure to Appear Program
  - of each $20.00 sent to the state, $10.00 is deposited in the general revenue fund of the State of Texas
- one-third ($10.00 of each $30.00) retained locally
  - of each $10.00 retained locally, $6.00 is paid to OmniBase Services, Inc. of Austin
  - of each $10.00 retained locally, $4.00 is administered by the city and used as determined by the city council

Driving Record Fee ($10.00)

- 100 percent sent to the state is credited to the Texas Department of Public Safety

Local Child Safety Fund Court Cost ($2.00-$5.00, not to exceed $5.00, $20.00, $25.00)

- 100 percent retained locally is administered by the city
  - if city population greater than 850,000 (according to most recent federal decennial census), deposited in the Municipal Child Safety Trust Fund and used for providing school crossing guard services. After paying school crossing guard services expenses, any remainder may be used to enhance child safety, health, or nutrition, including child abuse intervention and prevention and drug and alcohol abuse prevention
  - if city population less than 850,000 (according to most recent federal decennial census), used for a school crossing guard program if the city operates one. If not, or if money exceeds the amount necessary to operate the program, additional money may be deposited in an interest-bearing account or expended for programs designed to enhance child safety, health, or nutrition, including child abuse prevention and drug and alcohol abuse prevention

Local Traffic Court Cost ($3.00)

- 100 percent retained locally is administered by the city and used as determined by the city council

Local Municipal Court Building Security Fund Fee ($3.00)

- 100 percent retained locally is administered by the city and used to finance items for the purpose of providing security services for buildings housing a municipal court

Local Municipal Court Technology Fund Fee (not to exceed $4.00)

- 100 percent retained locally is administered by the city and used to finance the purchase of or to maintain technological enhancements for a municipal court

Local Juvenile Case Manager Fund Court Cost (not to exceed $5.00)

- 100 percent retained locally is administered by the city and used to finance the salary and benefits of a juvenile case manager

CHART OF OFFENSES AND CHARGES FOR MUNICIPAL COURTS
For Conviction of Offenses Committed On or After September 1, 2005 but Before December 1, 2005

Offense / Description	State CCC	State JRF	State STF	Local TFC	Local CS	Total*
MUNICIPAL ORDINANCES						
Parking authorized by Transportation Code §§542.202, 542.203	NA	NA	NA	NA	Note 1	Note 1
Pedestrian	NA	NA	NA	NA	NA	NA
All Other Municipal Offenses	40.00	4.00	NA	NA	NA	44.00
STATE LAW						
Education Code §25.093 – Parent Contributing to Nonattendance and §25.094 – Failure to Attend School	40.00	4.00	NA	NA	20.00	64.00
Transportation Code, Title 7, Subtitle C (Rules of the Road)						
- Parking and Pedestrian In a School Crossing Zone	NA	NA	30.00	3.00	25.00	58.00
- Parking and Pedestrian Outside a School Crossing Zone	NA	NA	30.00	3.00	NA	33.00
- §545.066 – Passing a School Bus	40.00	4.00	30.00	3.00	25.00	102.00
- Other In a School Crossing Zone (Note 2)	40.00	4.00	30.00	3.00	25.00	102.00
- Other Outside a School Crossing Zone (Note 2)	40.00	4.00	30.00	3.00	NA	77.00
All Other Misdemeanors (Note 3)						
- Privileged (handicapped) Parking (Transportation Code §681.011)	NA	NA	NA	NA	NA	0.00
- Other	40.00	4.00	NA	NA	NA	44.00

*** Add the following to the total whenever they apply:**

- Applicable fees for services of peace officers under Code of Criminal Procedure, Article 102.011, including:
  - ARREST FEE: $5.00 for issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, or penal law, or for making an arrest without a warrant. When service is performed by a peace officer employed by the state, 20 % ($1.00) is sent to the state.
  - WARRANT FEE: $50.00 for executing or processing an issued arrest warrant or capias. When service is performed by a peace officer employed by the state, 20% ($10.00) is sent to the state.
  - SUMMONING A WITNESS: $5.00 for serving a subpoena. Local fee.
  - SUMMONING A JURY: $5.00 for summoning a jury. Local fee.
  - SERVICE OF SUMMONS (for a defendant or child's parents): $35.00. Local fee.
  - OTHER COSTS: Costs for overtime paid for time spent testifying in or traveling to or from testifying in the trial of a case. Local fee.
- SPECIAL EXPENSE WARRANT FEE: Not to exceed $25.00 per warrant for failure to appear or violate promise to appear if governing body has passed required ordinance. Local fee.
- MUNICIPAL COURT BUILDING SECURITY FEE: $3.00 if governing body has passed required ordinance. Local fee.

- MUNICIPAL COURT TECHNOLOGY FEE: Not to exceed $4.00 if governing body has passed required ordinance. Local fee.
- FAILURE TO APPEAR, PAY, OR SATISFY JUDGMENT FEE: If city has contracted with the Department of Public Safety to provide information necessary for the Department to deny renewal of driver's licenses, $30.00 for: (a) each violation for which a person fails to appear, unless the person is acquitted of the charges for which the person failed to appear. The fee is due when: (1) the court enters judgment on the underlying offense reported to the Department; (2) the underlying offense is dismissed; or (3) bond or other security is posted to reinstate the charge for which the warrant was issued; or (b) failing to pay or satisfy a judgment ordering the payment of a fine and cost in the manner the court orders.
- JURY FEE: $3.00 per conviction where conviction is by a jury or where a defendant requests a jury trial and withdraws the request within less than 24 hours of the time of trial. Local fee.
- TIME PAYMENT FEE: $25.00 from a person who pays any part of a fine, court costs, or restitution on or after the 31st date after the date on which a judgment is entered assessing the fine, court costs, or restitution. One-half ($12.50) is sent to the state. One-tenth ($2.50) is retained locally for judicial efficiency. Four-tenths ($10.00) is retained locally with no restrictions.
- OTHER FEES INCLUDING:
  - ADMINISTRATIVE FEE FOR DISMISSING A CHARGE OF DRIVING WITH AN EXPIRED MOTOR VEHICLE REGISTRATION: Optional fee not to exceed $10.00. Local fee.
  - ADMINISTRATIVE FEE FOR DISMISSING A CHARGE OF DRIVING WITH AN EXPIRED DRIVER'S LICENSE. Optional fee not to exceed $10.00. Local fee.
  - ADMINISTRATIVE FEE FOR DISMISSING A CHARGE OF DRIVING WITH AN EXPIRED INSPECTION CERTIFICATE: Not to exceed $10.00 for mandatory dismissals. Local fee.
  - ADMINISTRATIVE FEES FOR REQUESTING A DRIVING SAFETY COURSE: (a) Optional fee not to exceed $10.00 for mandatory driving safety courses; and (b) Optional fee not to exceed the maximum amount of the fine for the offense for permissive driving safety courses. Local fees.
  - TEEN COURT FEES: (a) Optional fee not to exceed $10.00 for requesting teen court; and (b) Optional $10.00 teen court program fee. Local fees.

Note 1: Up to $5.00 court cost for cities with population less than 850,000 that have adopted appropriate ordinance, regulation, or order (optional).
$2.00 - $5.00 court cost for cities with population greater than 850,000 that have adopted appropriate ordinance, regulation, or order (mandatory).

Note 2: Includes offenses under the following chapters in the Transportation Code:
Chapter 541 – Definitions
Chapter 542 – General Provisions
Chapter 543 – Arrest and Prosecution of Violators
Chapter 544 – Traffic Signs, Signals, and Markings
Chapter 545 – Operation and Movement of Vehicles
Chapter 546 – Operation of Authorized Emergency Vehicles and Certain Other Vehicles
Chapter 547 – Vehicle Equipment
Chapter 548 – Compulsory Inspection of Vehicles
Chapter 550 – Accidents and Accident Reports
Chapter 551 – Operation of Bicycles, Mopeds, and Play Vehicles
Chapter 552 – Pedestrians
Chapter 600 – Miscellaneous Provisions

Note 3: All other state law offenses, including **for example**:

Alcoholic Beverage Code
- §106.02 – Purchase of Alcohol by a Minor
- §106.025 – Attempt to Purchase Alcohol by a Minor
- §106.04 – Consumption of Alcohol by a Minor
- §106.05 – Possession of Alcohol by a Minor
- §106.07 – Misrepresentation of Age by a Minor

Health and Safety Code
- §161.082 – Sale of Cigarettes or Tobacco Products to Persons Younger Than 18 Years of Age
- §161.252 – Possession, Purchase, Consumption, or Receipt of Cigarettes or Tobacco Products by Minor

Penal Code
- §31.03 – Theft
- §38.10 – Bail Jumping and Failure to Appear
- §42.01 – Disorderly Conduct
- §49.02 – Public Intoxication

Transportation Code offenses in:
- Chapter 501 – Certificate of Title Act
- Chapter 502 – Registration of Vehicles
- Chapter 521 – Driver's Licenses and Certificates
- Chapter 522 – Commercial Driver's Licenses
- Chapter 601 – Motor Vehicle Safety Responsibility Act
- Chapter 621 – General Provisions Relating to Vehicle Size and Weight
- Chapter 643 – Motor Carrier Registration
- Chapter 644 – Commercial Motor Vehicle Safety Standards
- Chapter 661 – Protective Headgear for Motorcycle Operators and Passengers
- Chapter 681 – Privileged Parking

Parks and Wildlife Code
- §31.095 – Excessive Speed
- §31.102 – Operating Boats in Restricted Areas
- §46.001 – No Fishing License

CHART OF OFFENSES AND CHARGES FOR MUNICIPAL COURTS
For Conviction of Offenses Committed On or After December 1, 2005

Offense / Description	State CCC	State JRF	State JSF	State STF	Local TFC	Local CS	Total*
MUNICIPAL ORDINANCES							
Parking authorized by Transportation Code §§542.202, 542.203	NA	NA	NA	NA	NA	Note 1	Note 1
Pedestrian	NA	NA	NA	NA	NA	NA	NA
All Other Municipal Offenses	40.00	4.00	4.00	NA	NA	NA	48.00
STATE LAW							
Education Code §25.093 – Parent Contributing to Nonattendance and §25.094 – Failure to Attend School	40.00	4.00	4.00	NA	NA	20.00	68.00
Transportation Code, Title 7, Subtitle C (Rules of the Road)							
- Parking and Pedestrian In a School Crossing Zone	NA	NA	NA	30.00	3.00	25.00	58.00
- Parking and Pedestrian Outside a School Crossing Zone	NA	NA	NA	30.00	3.00	NA	33.00
- §545.066 – Passing a School Bus	40.00	4.00	4.00	30.00	3.00	25.00	106.00
- Other In School Crossing Zone (Note 2)	40.00	4.00	4.00	30.00	3.00	25.00	106.00
- Other Outside School Crossing Zone (Note 2)	40.00	4.00	4.00	30.00	3.00	NA	81.00
All Other Misdemeanors (Note 3)							
- Privileged (handicapped) Parking (Transportation Code §681.011)	NA	NA	NA	NA	NA	NA	0.00
- Other	40.00	4.00	4.00	NA	NA	NA	48.00

*** Add the following to the total whenever they apply:**

- Applicable fees for services of peace officers under Code of Criminal Procedure, Article 102.011, including:
  - ARREST FEE: $5.00 for issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, or penal law, or for making an arrest without a warrant. When service is performed by a peace officer employed by the state, 20 % ($1.00) is sent to the state.
  - WARRANT FEE: $50.00 for executing or processing an issued arrest warrant or capias. When service is performed by a peace officer employed by the state, 20% ($10.00) is sent to the state.
  - SUMMONING A WITNESS: $5.00 for serving a subpoena. Local fee.
  - SUMMONING A JURY: $5.00 for summoning a jury. Local fee.
  - SERVICE OF SUMMONS (for a defendant or child's parents): $35.00. Local fee.
  - OTHER COSTS: Costs for overtime paid for time spent testifying in or traveling to or from testifying in the trial of a case. Local fee.
- **DRIVING RECORD FEE (DRF): For offenses committed on or after January 1, 2006, an optional $10.00 fee for obtaining a copy of the defendant's driving record from the Texas Department of Public Safety. One hundred percent is sent to the state.**
- SPECIAL EXPENSE WARRANT FEE: Not to exceed $25.00 per warrant for failure to appear or violate promise to appear if governing body has passed required ordinance. Local fee.

- MUNICIPAL COURT BUILDING SECURITY FEE: $3.00 if governing body has passed required ordinance. Local fee.
- MUNICIPAL COURT TECHNOLOGY FEE: Not to exceed $4.00 if governing body has passed required ordinance. Local fee.
- **JUVENILE CASE MANAGER COURT COST (JCM): For conviction of offenses committed on or after January 1, 2006, an amount not to exceed $5.00 if governing body has passed required ordinance.** Local fee.
- FAILURE TO APPEAR, PAY, OR SATISFY JUDGMENT FEE: If city has contracted with the Department of Public Safety to provide information necessary for the Department to deny renewal of driver's licenses, $30.00 for: (a) each violation for which a person fails to appear, unless the person is acquitted of the charges for which the person failed to appear. The fee is due when: (1) the court enters judgment on the underlying offense reported to the Department; (2) the underlying offense is dismissed; or (3) bond or other security is posted to reinstate the charge for which the warrant was issued; or (b) failing to pay or satisfy a judgment ordering the payment of a fine and cost in the manner the court orders.
- JURY FEE: $3.00 per conviction where conviction is by a jury or where a defendant requests a jury trial and withdraws the request within less than 24 hours of the time of trial. Local fee.
- TIME PAYMENT FEE: $25.00 from a person who pays any part of a fine, court costs, or restitution on or after the 31st date after the date on which a judgment is entered assessing the fine, court costs, or restitution. One-half ($12.50) is sent to the state. One-tenth ($2.50) is retained locally for judicial efficiency. Four-tenths ($10.00) is retained locally with no restrictions.
- OTHER FEES INCLUDING:
  - ADMINISTRATIVE FEE FOR DISMISSING A CHARGE OF DRIVING WITH AN EXPIRED MOTOR VEHICLE REGISTRATION: Optional fee not to exceed $10.00. Local fee.
  - ADMINISTRATIVE FEE FOR DISMISSING A CHARGE OF DRIVING WITH AN EXPIRED DRIVER'S LICENSE. Optional fee not to exceed $10.00. Local fee.
  - ADMINISTRATIVE FEE FOR DISMISSING A CHARGE OF DRIVING WITH AN EXPIRED INSPECTION CERTIFICATE: Not to exceed $10.00 for mandatory dismissals. Local fee.
  - ADMINISTRATIVE FEES FOR REQUESTING A DRIVING SAFETY COURSE: (a) Optional fee not to exceed $10.00 for mandatory driving safety courses; and (b) Optional fee not to exceed the maximum amount of the fine for the offense for permissive driving safety courses. Local fees.
  - TEEN COURT FEES: (a) Optional fee not to exceed $10.00 for requesting teen court; and (b) Optional $10.00 teen court program fee. Local fees.
  - **EXPUNGEMENT FEE (EF): Applications for expunction filed on or after January 1, 2006, $30.00 for each application filed under: (1) Alcoholic Beverage Code, Section 106.12; (2) Code of Criminal Procedure, Article 45.0216; (3) Code of Criminal Procedure, Article 45.055; and (4) Health and Safety Code, Section 161.255.**

Note 1: Up to $5.00 court cost for cities with population less than 850,000 that have adopted appropriate ordinance, regulation, or order (optional).
$2.00 - $5.00 court cost for cities with population greater than 850,000 that have adopted appropriate ordinance, regulation, or order (mandatory).

Note 2: Includes offenses under the following chapters in the Transportation Code:
Chapter 541 – Definitions
Chapter 542 – General Provisions
Chapter 543 – Arrest and Prosecution of Violators
Chapter 544 – Traffic Signs, Signals, and Markings
Chapter 545 – Operation and Movement of Vehicles
Chapter 546 – Operation of Authorized Emergency Vehicles and Certain Other Vehicles
Chapter 547 – Vehicle Equipment
Chapter 548 – Compulsory Inspection of Vehicles
Chapter 550 – Accidents and Accident Reports
Chapter 551 – Operation of Bicycles, Mopeds, and Play Vehicles
Chapter 552 – Pedestrians
Chapter 600 – Miscellaneous Provisions

Note 3: All other state law offenses, including **for example**:
Alcoholic Beverage Code
§106.02 – Purchase of Alcohol by a Minor
§106.025 – Attempt to Purchase Alcohol by a Minor
§106.04 – Consumption of Alcohol by a Minor
§106.05 – Possession of Alcohol by a Minor
§106.07 – Misrepresentation of Age by a Minor
Health and Safety Code
§161.082 – Sale of Cigarettes or Tobacco Products to Persons Younger Than 18 Years of Age
§161.252 – Possession, Purchase, Consumption, or Receipt of Cigarettes or Tobacco Products by Minor
Penal Code
§31.03 – Theft
§38.10 – Bail Jumping and Failure to Appear
§42.01 – Disorderly Conduct
§49.02 – Public Intoxication
Transportation Code offenses in:
Chapter 501 – Certificate of Title Act
Chapter 502 – Registration of Vehicles
Chapter 521 – Driver's Licenses and Certificates
Chapter 522 – Commercial Driver's Licenses
Chapter 601 – Motor Vehicle Safety Responsibility Act
Chapter 621 – General Provisions Relating to Vehicle Size and Weight
Chapter 643 – Motor Carrier Registration
Chapter 644 – Commercial Motor Vehicle Safety Standards
Chapter 661 – Protective Headgear for Motorcycle Operators and Passengers
Chapter 681 – Privileged Parking
Parks and Wildlife Code
§31.095 – Excessive Speed
§31.102 – Operating Boats in Restricted Areas
§46.001 – No Fishing License

DRIVING SAFETY COURSES

Driving Safety Course or Motorcycle Operator Course Dismissal Procedures
Code of Criminal Procedure, Article 45.0511

(a) Except as provided by Subsection (a)(1), this article applies only to an alleged offense that:

(1) is within the jurisdiction of a justice court or a municipal court;
(2) involves the operation of a motor vehicle; and
(3) is defined by:
(A) Section 472.022, Transportation Code;
(B) Subtitle C, Title 7, Transportation Code; or
(C) Section 729.001(a)(3), Transportation Code.

(a-1) If the defendant is younger than 25 years of age, this article applies to any alleged offense that:

(1) is within the jurisdiction of a justice court or a municipal court;
(2) involves the operation of a motor vehicle; and
(3) is classified as a moving violation.

(b) The judge shall require the defendant to successfully complete a driving safety course approved by the Texas Education Agency or a course under the motorcycle operator training and safety program approved by the designated state agency under Chapter 662, Transportation Code, if:

(1) the defendant elects driving safety course or motorcycle operator training course dismissal under this article;
(2) the defendant:
(A) has not completed an approved driving safety course or motorcycle operator training course, as appropriate, within the 12 months preceding the date of the offense; or
(B) does not have a valid Texas driver's license or permit, is a member of the United States military forces serving on active duty, and has not completed a driving safety course or motorcycle operator training course, as appropriate, in another state within the 12 months preceding the date of the offense;
(3) the defendant enters a plea under Article 45.021 in person or in writing of no contest or guilty on or before the answer date on the notice to appear and:
(A) presents in person or by counsel to the court a request to take a course; or
(B) sends to the court by certified mail, return receipt requested, postmarked on or before the answer date on the notice to appear, a written request to take a course;
(4) the defendant:
(A) has a valid Texas driver's license or permit; or
(B) is a member of the United States military forces serving on active duty;
(5) the defendant is charged with an offense to which this article applies, other than speeding 25 miles per hour or more over the posted speed limit; and

(6) the defendant provides evidence of financial responsibility as required by Chapter 601, Transportation Code.

(c) The court shall enter judgment on the defendant's plea of no contest or guilty at the time the plea is made, defer imposition of the judgment, and allow the defendant 90 days to successfully complete the approved driving safety course or motorcycle operator training course and present to the court:

(1) a uniform certificate of completion of the driving safety course or a verification of completion of the motorcycle operator training course;

(2) unless the judge proceeds under Subsection (c-1), the defendant's driving record as maintained by the Department of Public Safety, if any, showing that the defendant had not completed an approved driving safety course or motorcycle operator training course, as applicable, within the 12 months preceding the date of the offense;

(3) an affidavit stating that the defendant was not taking a driving safety course or motorcycle operator training course, as applicable, under this article on the date the request to take the course was made and had not completed such a course that is not shown on the defendant's driving record within the 12 months preceding the date of the offense; and

(4) if the defendant does not have a valid Texas driver's license or permit and is a member of the United States military forces serving on active duty, an affidavit stating that the defendant was not taking a driving safety course or motorcycle operator training course, as appropriate, in another state on the date the request to take the course was made and had not completed such a course within the 12 months preceding the date of the offense.

(c-1) As an alternative to presenting the defendant's driving record to the court under Subsection (c)(2), the judge, at the time the defendant requests a driving safety course or motorcycle operator training course dismissal under this article may require the defendant to pay a fee of $10 for a copy of the driving record and the judge may obtain a copy of the driving record from the Texas Department of Public Safety. The $10 fee under this subsection is in addition to any other fee required under this article. If the defendant's driving record shows that the defendant has not completed an approved driving safety course or motorcycle operator training course, as appropriate, within the 12 months preceding the date of the offense, the judge shall allow the defendant to complete the appropriate course as provided by this article. The custodian of a municipal or county treasury who receives fees collected under this subsection shall keep a record of the fees and, without deduction, forward the fees to the comptroller, with and in the manner required for other fees and costs received in connection with criminal cases. The comptroller shall credit fees received under this subsection to the Texas Department of Public Safety.

(d) Notwithstanding Subsections (b) (2) and (3), before the final disposition of the case, the court may grant a request to take a driving safety course or a motorcycle operator training course under this article.

(e) A request to take a driving safety course or motorcycle operator training course made at or before the time and at the place at which a defendant is required to appear in court is an appearance in compliance with the defendant's promise to appear.

(f) In addition to court costs and fees authorized or imposed by a law of this state and applicable to the offense, the court may:

(1) require a defendant requesting a course under Subsection (b) to pay an administrative fee set by the court to cover the cost of administering this article at an amount of not more than $10; or

(2) require a defendant requesting a course under Subsection (d) to pay a fee set by the court at an amount not to exceed the maximum amount of the fine for the offense committed by the defendant.

(g) A defendant who requests but does not take a course is not entitled to a refund of the fee.

(h) Fees collected by a municipal court shall be deposited in the municipal treasury. Fees collected by another court shall be deposited in the county treasury of the county in which the court is located.

(i) If a defendant requesting a course under this article fails to comply with Subsection (c), the court shall:

(1) notify the defendant in writing, mailed to the address on file with the court or appearing on the notice to appear, of that failure; and

(2) require the defendant to appear at the time and place stated in the notice to show cause why the evidence was not timely submitted to the court.

(j) If the defendant fails to appear at the time and place stated in the notice under Subsection (i), or appears at the time and place stated in the notice but does not show good cause for the defendant's failure to comply with Subsection (c), the court shall enter an adjudication of guilt and impose sentence.

(k) On a defendant's showing of good cause for failure to furnish evidence to the court, the court may allow an extension of time during which the defendant may present:

(1) a uniform certificate of course completion as evidence that the defendant successfully completed the driving safety course; or

(2) a verification of course completion as evidence that the defendant successfully completed the motorcycle operator training course.

(*l*) When a defendant complies with Subsection (c), the court shall:

(1) remove the judgment and dismiss the charge;

(2) report the fact that the defendant successfully completed a driving safety course or a motorcycle operator training course and the date of completion to the Texas Department of Public Safety for inclusion in the person's driving record; and

(3) state in that report whether the course was taken under this article to provide information necessary to determine eligibility to take a subsequent course under Subsection (b).

(m) The court may dismiss only one charge for each completion of a course.

(n) A charge that is dismissed under this article may not be part of a person's driving record or used for any purpose.

(o) An insurer delivering or issuing for delivery a motor vehicle insurance policy in this state may not cancel or increase the premium charged an insured under the policy because the insured completed a driving safety course or a motorcycle operator training course, or had a charge dismissed under this article.

(p) The court shall advise a defendant charged with a misdemeanor under Section 472.022, Transportation Code, Subtitle C, Title 7, Transportation Code, or Section 729.001(a)(3), Transportation Code, committed while operating a motor vehicle of the defendant's right under this article to successfully complete a driving safety course, or if the offense was committed while operating a motorcycle, a motorcycle operator training course. The right to complete a course does not apply to a defendant charged with:

(1) a violation of Section 545.066, 550.022, or 550.023, Transportation Code;

(2) a serious traffic violation; or

(3) an offense to which Section 542.404 or 729.004(b), Transportation Code, applies.

(q) A notice to appear issued for an offense to which this article applies must inform a defendant charged with an offense under Section 472.022, Transportation Code, an offense under Subtitle C, Title 7, Transportation Code, or an offense under Section 729.000(a)(3), Transportation Code, committed while operating a motor vehicle of the defendant's right to complete a driving safety course or, if the offense was committed while operating a motorcycle, of the defendant's right to complete a motorcycle operator training course. The notice required by this subsection must read substantially as follows:

"You may be able to require that this charge be dismissed by successfully completing a driving safety course or a motorcycle operator training course. You will lose that right if, on or before your appearance date, you do not provide the court with notice of your request to take the course."

(r) If the notice required by Subsection (q) is not provided to the defendant charged with the offense, the defendant may continue to exercise the defendant's right to take a driving safety course or a motorcycle operator training course until the notice required by Subsection (q) is provided to the defendant or there is a final disposition of the case.

(s) This article does not apply to an offense committed by a person who:

(1) holds a commercial driver's license; or

(2) held a commercial driver's license when the offense was committed.

(t) An order of deferral under Subsection (c) terminates any liability under a bail bond or appearance bond given for the charge.

(u) The requirement of Subsection (b)(2) does not apply to a defendant charged with an offense under Section 545.412, Transportation Code, if the judge requires the defendant to attend and present proof that the defendant has successfully completed a specialized driving safety course that includes four hours of instruction that encourages the use of child passenger safety seat systems, and any driving safety course taken by the defendant under this section within the 12 months preceding the date of the offense did not include that training. The person's driving record under Subsection (c)(2) and the affidavit of the defendant under Subsection (c)(3) is required to include only previous or concurrent courses that included that training.

Comments

- *Basic court costs and fees apply to courses taken under both Subsection (b) and Subsection (d).*
- *An optional administrative fee not to exceed $10.00 applies to Subsection (b) courses.*
- *An optional fee not to exceed the maximum amount of the fine for the offense applies to Subsection (d) courses.*

Example 1

Assume that in January 2006 a defendant is issued a citation for speeding and qualifies for a driving safety course under Subsection (b). If the city has adopted the municipal court building security fee, the maximum municipal court technology fee, the maximum juvenile case manager court cost, and the judge imposes the maximum administrative fee, what court cost and fee amounts should be charged?

Consolidated court cost	*$40.00*
Juror reimbursement fee	*4.00*
Judicial support fee	*4.00*
State traffic fine	*30.00*
Traffic court cost	*3.00*
Municipal court building security fee	*3.00*
Municipal court technology fee	*4.00*
Juvenile case manager court cost	*5.00*
Arrest fee	*5.00*
Administrative fee	*10.00*
Total	*$108.00*

Example 2

Assume that in January 2006 a defendant is issued a citation for speeding and is allowed to take a Subsection (d) driving safety course. If the city has adopted the municipal court building security fee, the maximum municipal court technology fee, the maximum juvenile case manager court cost, and the judge imposes the maximum administrative fee, what court cost and fee amounts should be charged?

Consolidated court cost	*$40.00*
Juror reimbursement fee	*4.00*
Judicial support fee	*4.00*
State traffic fine	*30.00*
Traffic court cost	*3.00*
Municipal court building security fee	*3.00*
Municipal court technology fee	*4.00*
Juvenile case manager court cost	*5.00*
Arrest fee	*5.00*
Administrative fee	*200.00*
Total	*$298.00*

ALTERNATIVE SENTENCING

Suspension of Sentence and Deferral of Final Disposition
Code of Criminal Procedure, Article 45.051

(a) On a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by fine only **and payment of all court costs**, the judge may, at the judge's discretion, defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period not to exceed 180 days. An order of deferral under this subsection terminates any liability under a bail bond or an appearance bond given for the charge.

(b) During the deferral period, the judge may, at the judge's discretion, require the defendant to:

(1) post a bond in the amount of the fine assessed to secure payment of the fine;
(2) pay restitution to the victim of the offense in an amount not to exceed the fine assessed;
(3) submit to professional counseling;
(4) submit to diagnostic testing for alcohol or a controlled substance or drug;
(5) submit to a psychosocial assessment;
(6) participate in an alcohol or drug abuse treatment or education program;
(7) pay the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs;
(8) complete a driving safety course approved under Chapter 1001, Education Code, or another course as directed by the judge;
(9) present to the court satisfactory evidence that the defendant has complied with each requirement imposed by the judge under this article; and
(10) comply with any other reasonable condition.

(b-1) If the defendant is younger than 25 years of age and the offense committed by the defendant is a traffic offense classified as a moving violation:

(1) Subsection (b)(8) does not apply;
(2) during the deferral period, the judge shall require the defendant to complete a driving safety course approved under Chapter 1001, Education Code; and
(3) if the defendant holds a provisional license, during the deferral period the judge shall require that the defendant be examined by the Department of Public Safety as required by Section 521.161(b)(2), Transportation Code; a defendant is not exempt from the examination regardless of whether the defendant was examined previously.

(b-2) A person examined as required by Section (b-1)(3) must pay a $10 examination fee.

(b-3) The fee collected under Section (b-2) must be deposited to the credit of a special account in the general revenue fund and may be used only by the Department of Public Safety for the administration of Chapter 521, Transportation Code.

(c) On determining that the defendant has complied with the requirements imposed by the judge under this article, the judge shall dismiss the complaint, and it shall be clearly noted in the docket that the complaint is dismissed and that there is not a final conviction. **If the complaint is dismissed, a special expense not to exceed the amount of the fine assessed may be imposed.**

(d) If by the conclusion of the deferral period the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the judge may impose the fine assessed or a lesser fine. The imposition of the fine or lesser fine constitutes a final conviction of the defendant. The subsection does not apply to a defendant required under Subsection (b-1) to complete a driving safety course approved under Chapter 1001, Education Code, or an examination under Section 521.161(b)(2), Transportation Code.

(d-1) If the defendant was required to complete a driving safety course or an examination under Subsection (b-1) and by the conclusion of the deferral period the defendant does not present satisfactory evidence that the defendant completed that course or examination, the judge shall impose the fine assessed. The imposition of the fine constitutes a final conviction of the defendant.

(e) Records relating to a complaint dismissed as provided by this article may be expunged under Article 55.01. If a complaint is dismissed under this article, there is not a final conviction and the complaint may not be used against the person for any purpose.

(f) This article does not apply to:

(1) an offense to which Section 542.404 or 729.004(b), Transportation Code, applies; or

(2) a violation of a state law or local ordinance relating to motor vehicle control, other than a parking violation, committed by a person who holds a commercial driver's license, or held a commercial driver's license when the offense was committed.

Comments

- *Basic court costs and fees are due.*
- *An optional special expense, not to exceed the amount of the fine assessed may be imposed if the complaint is dismissed.*

Example

Assume a defendant's case for Disorderly Conduct, for an offense that occurred in January 2006, is disposed of by deferred disposition. Also assume: (1) the city has adopted the municipal court building security fee, the maximum municipal court technology fee and the maximum juvenile case manager court cost; (2) the fine assessed,

but not imposed, is $300.00; and (3) the judge charges a special expense equal to one-half of the amount of the assessed fine. What court cost and fee amounts should be charged?

Consolidated court cost	*$40.00*
Juror reimbursement fee	*4.00*
Judicial support fee	*4.00*
Municipal court building security fee	*3.00*
Municipal court technology fee	*4.00*
Juvenile case manager court cost	*5.00*
Arrest fee	*5.00*
Subtotal	*65.00*
Special expense	*150.00*
Total	*$215.00*

Dismissal of Misdemeanor Charge on Completion of Teen Court Program
Code of Criminal Procedure, Article 45.052

(a) A justice or municipal court may defer proceedings against a defendant who is under the age of 18 or enrolled full time in an accredited secondary school in a program leading toward a high school diploma for not more than 180 days if the defendant:

(1) is charged with a misdemeanor punishable by fine only or a violation of a penal ordinance of a political subdivision, including a traffic offense punishable by fine only;

(2) pleads nolo contendere or guilty to the offense in open court with the defendant's parent, guardian, or managing conservator present;

(3) presents to the court an oral or written request to attend a teen court program; and

(4) has not successfully completed a teen court program in the two years preceding the date that the alleged offense occurred.

(b) The teen court program must be approved by the court.

(c) A defendant for whom proceedings are deferred under Subsection (a) shall complete the teen court program not later than the 90th day after the date the teen court hearing to determine punishment is held or the last day of the deferral period, whichever date is earlier. The justice or municipal court shall dismiss the charge at the time the defendant presents satisfactory evidence that the defendant has successfully completed the teen court program.

(d) A charge dismissed under this article may not be part of the defendant's criminal record or driving record or used for any purpose. However, if the charge was for a traffic offense, the court shall report to the Department of Public Safety that the defendant successfully completed the teen court program and the date of completion for inclusion in the defendant's driving record.

(e) **The justice or municipal court may require a person who requests a teen court program to pay a fee not to exceed $10 that is set by the court to cover the costs of administering this article.** Fees collected by a municipal court shall be deposited in the municipal treasury. Fees collected by a justice court shall be deposited in the county treasury of the county in which the court is located. A person who requests a teen court program and fails to complete the program is not entitled to a refund of the fee.

(f) A court may transfer a case in which proceedings have been deferred under this section to a court in a contiguous county if the court to which the case is transferred consents. A case may not be transferred unless it is within the jurisdiction of the court to which it is transferred.

(g) **In addition to the fee authorized by Subsection (e) of this article, the court may require a child who requests a teen court program to pay a $10 fee to cover the cost to the teen court for performing its duties under this article.** The court shall pay the fee to the teen court program, and the teen court program must account to the court for the receipt and disbursal of the fee. A child who pays a fee under this subsection is not entitled to a refund of the fee, regardless of whether the child successfully completes the teen court program.

(h) **A justice or municipal court may exempt a defendant for whom proceedings are deferred under this article from the requirement to pay a court cost or fee that is imposed by another statute.**

Comments

- *The court may exempt a defendant from the requirement to pay basic court costs and fees.*
- *An optional administrative fee not to exceed $10.00 may be charged.*
- *An optional $10.00 teen court program fee may be charged.*

Example

Assume a defendant's case for Disorderly Conduct, for an offense that occurred in May 2006, is disposed of by the teen court provisions. Also assume: (1) the city has adopted the municipal court building security fee, the maximum municipal court technology fee, and the maximum juvenile case manager court cost; (2) the court imposes basic court costs and fees; (3) the court charges the maximum administrative fee; and (4) the court charges the teen court program fee. What court cost and fee amounts should be charged?

Consolidated court cost	*$40.00*
Juror reimbursement fee	*4.00*
Judicial support fee	*4.00*
Municipal court building security fee	*3.00*
Municipal court technology fee	*4.00*
Juvenile case manager court cost	*5.00*
Arrest fee	*5.00*
Subtotal	*65.00*
Administrative fee	*10.00*
Teen court program fee	*10.00*
Total	*$85.00*

Dismissal of Misdemeanor Charge on Commitment of Chemically Dependent Person
Code of Criminal Procedure, Article 45.053

(a) On a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by a fine only, a justice or municipal court may defer further proceedings for 90 days without entering an adjudication of guilt if:

(1) the court finds that the offense resulted from or was related to the defendant's chemical dependency; and

(2) an application for court-ordered treatment of the defendant is filed in accordance with Chapter 462, Health and Safety Code.

(b) At the end of the deferral period, the justice or municipal court shall dismiss the charge if satisfactory evidence is presented that the defendant was committed for and completed court-ordered treatment in accordance with Chapter 462, Health and Safety Code, and it shall be clearly noted in the docket that the complaint is dismissed and that there is not a final conviction.

(c) If at the conclusion of the deferral period satisfactory evidence that the defendant was committed for and completed court-ordered treatment in accordance with Chapter 462, Health and Safety Code, is not presented, the justice or municipal court may impose the fine assessed or impose a lesser fine. The imposition of a fine constitutes a final conviction of the defendant.

(d) Records relating to a complaint dismissed under this article may be expunged under Article 55.01 of this code. If a complaint is dismissed under this article, there is not a final conviction and the complaint may not be used against the person for any purpose.

Comments

- *Basic court costs and fees are due. The defendant must plead nolo or guilty and proceedings are deferred.*

Example

Assume a defendant's case for Disorderly Conduct, for an offense that occurred in April 2006, is disposed of by the provisions of Code of Criminal Procedure, Article 45.053 (Dismissal of Misdemeanor Charge on Commitment of Chemically Dependent Person). Also assume the city has adopted the municipal court building security fee, the maximum municipal court technology fee, and the maximum juvenile case manager court cost. What court cost and fee amounts should be charged?

Consolidated court cost	*$40.00*
Juror reimbursement fee	*4.00*
Judicial support fee	*4.00*
Municipal court building security fee	*3.00*
Municipal court technology fee	*4.00*
Juvenile case manager court cost	*5.00*
Arrest fee	*5.00*
Total	*$65.00*

Attendance at Alcohol Awareness Course; License Suspension
Alcoholic Beverage Code, Section 106.115

(a) **On the placement of a minor on deferred disposition** for an offense under Section 49.02, Penal Code, or under Section 106.02, 106.025, 106.04, 106.041, 106.05, or 106.07, the court shall require the defendant to attend an alcohol awareness program approved by the Texas Commission on Alcohol and Drug Abuse. **On conviction** of a minor of an offense under one or more of those sections, the court, in addition to assessing a fine as provided by those sections, shall require a defendant who has not been previously convicted of an offense under one of those sections to attend the alcohol awareness program. If the defendant has been previously convicted once or more of an offense under one or more of those sections, the court may require the defendant to attend the alcohol awareness program. If the defendant is younger than 18 years of age, the court may require the parent or guardian of the defendant to attend the program with the defendant. The Texas Commission on Alcohol and Drug Abuse:

(1) is responsible for the administration of the certification of approved alcohol awareness programs;

(2) may charge a nonrefundable application fee for:

(A) initial certification of the approval; or

(B) renewal of the certification;

(3) shall adopt rules regarding alcohol awareness programs approved under this section; and

(4) shall monitor, coordinate, and provide training to a person who provides an alcohol awareness program.

(b) When requested, an alcohol awareness program may be taught in languages other than English.

(c) The court shall require the defendant to present to the court, within 90 days of the date of final conviction, evidence in the form prescribed by the court that the defendant, as ordered by the court, has satisfactorily completed an alcohol awareness program or performed the required hours of community service. For good cause the court may extend this period by not more than 90 days. If the defendant presents the required evidence within the prescribed period, the court may reduce the assessed fine to an amount equal to no less than one-half of the amount of the initial fine.

(d) If the defendant does not present the required evidence within the prescribed period, the court:

(1) shall order the Department of Public Safety to:

(A) suspend the defendant's driver's license or permit for a period not to exceed six months or, if the defendant does not have a license or permit, to deny the issuance of a license or permit to the defendant for that period; or

(B) if the defendant has been previously convicted of an offense under one or more of the sections listed in Subsection (a), suspend the defendant's driver's license or permit for a period not to exceed one year or, if the defendant does not have a license or permit, to deny the issuance of a license or permit to the defendant for that period; and

(2) may order the defendant or the parent, managing conservator, or guardian of the defendant to do any act or refrain from doing any act if the court determines that doing the act or refraining from doing the act will increase the likelihood that the defendant will present evidence to the court that the defendant has satisfactorily completed an alcohol awareness program or performed the required hours of community service.

(e) The Department of Public Safety shall send notice of the suspension or prohibition order issued under Subsection (d) by first class mail to the defendant. The notice must include the date of the suspension or prohibition order, the reason for the suspension or prohibition, and the period covered by the suspension or prohibition.

Comments

- *Basic court costs and fees are due. There is a conviction or deferred disposition.*

Example 1

Assume a defendant's case for Purchase of Alcohol by a Minor (Alcoholic Beverage Code, Section 106.02), where the offense occurred in March 2006, is disposed of by deferred disposition. The defendant is required to attend an alcohol awareness program under Alcoholic Beverage Code, Section 106.115. Also assume: (1) the city has adopted the municipal court building security fee, the maximum municipal court technology fee, and the maximum juvenile case manager court cost; (2) the fine assessed, but not imposed, is $200.00; and (3) the judge charges a special expense equal to one-half of the amount of the assessed fine. What court cost and fee amounts should be charged?

Consolidated court cost	*$40.00*
Juror reimbursement fee	*4.00*
Judicial support fee	*4.00*
Municipal court building security fee	*3.00*
Municipal court technology fee	*4.00*
Juvenile case manager court cost	*5.00*
Arrest fee	*5.00*
Subtotal	*65.00*
Special expense	*100.00*
Total	*$165.00*

Example 2

Assume a defendant is convicted of Alcoholic Beverage Code, Section 106.05 (Possession of Alcohol by a Minor), where the offense occurred in February 2006. The defendant is required to attend an alcohol awareness program under Alcoholic Beverage Code. Section 106.115. Also assume the city has adopted the municipal court building security fee, the maximum municipal court technology fee, the maximum juvenile case manager court cost, and the judge imposes a fine of $200.00. What court cost, fee, and fine amounts should be charged?

Consolidated court cost	*$40.00*
Juror reimbursement fee	*4.00*
Judicial support fee	*4.00*
Municipal court building security fee	*3.00*
Municipal court technology fee	*4.00*
Juvenile case manager court cost	*5.00*
Arrest fee	*5.00*
Subtotal	*65.00*
Fine	*200.00*
Total	*$265.00*

Tobacco Awareness Program; Community Service
Health and Safety Code, Section 161.253

(a) **On conviction** of an individual for an offense under Section 161.252, the court shall suspend execution of sentence and shall require the defendant to attend a tobacco awareness program approved by the commissioner. The court may require the parent or guardian of the defendant to attend the tobacco awareness program with the defendant.

(b) On request, a tobacco awareness program may be taught in languages other than English.

(c) If the defendant resides in a rural area of this state or another area of this state in which access to a tobacco awareness program is not readily available, the court shall

require the defendant to perform eight to 12 hours of tobacco-related community service instead of attending the tobacco awareness program.

(d) The tobacco awareness program and the tobacco-related community service are remedial and are not punishment.

(e) Not later than the 90th day after the date of a conviction under Section 161.252, the defendant shall present to the court, in the manner required by the court, evidence of satisfactory completion of the tobacco awareness or the tobacco-related community service.

(f) On receipt of the evidence required under Subsection (e), the court shall:

(1) if the defendant has been previously convicted of an offense under Section 161.252, execute the sentence, and at the discretion of the court, reduce the fine imposed to not less than half the fine previously imposed by the court; or

(2) if the defendant has not been previously convicted of an offense under Section 161.252, discharge the defendant and dismiss the complaint or information against the defendant.

(g) If the court discharges the defendant under Subsection (f)(2), the defendant is released from all penalties and disabilities resulting from the offense except that the defendant is considered to have been convicted of the offense if the defendant is subsequently convicted of an offense under Section 161.252 committed after the dismissal under Subsection (f)(2).

Comments

- *Basic court costs and fees are due. There is a conviction on the front end.*

Example 1

Assume a defendant's case for Possession of Cigarettes or Tobacco (Health and Safety Code, Section 161.252), where the offense occurred in March 2006, is disposed of under Health and Safety Code, Section 161.253 (Tobacco Awareness Program; Community Service). The defendant is required to attend a tobacco awareness program. The defendant has not been previously convicted of an offense under Section 161.252. Also assume the city has adopted the municipal court building security fee, the maximum municipal court technology fee, and the maximum juvenile case manager court cost. What court cost and fee amounts should be charged?

Consolidated court cost	*$40.00*
Juror reimbursement fee	*4.00*
Judicial support fee	*4.00*
Municipal court building security fee	*3.00*
Municipal court technology fee	*4.00*
Juvenile case manager court cost	*5.00*
Arrest fee	*5.00*
Total	*$65.00*

Example 2

Assume a defendant's case for Purchase of Cigarettes or Tobacco (Health and Safety Code, Section 161.252), where the offense occurred in January 2006, is disposed of under Health and Safety Code, Section 161.253 (Tobacco Awareness Program; Community Service). The defendant is required to attend a tobacco awareness program. The defendant has previously been convicted of an offense under Section 161.252. Also assume the city has adopted the municipal court building security fee, the maximum municipal court technology fee, the maximum juvenile case manager court cost, and the judge imposes the maximum fine. What court cost, fee, and fine amounts should be charged?

Consolidated court cost	*$40.00*
Juror reimbursement fee	*4.00*
Judicial support fee	*4.00*
Municipal court building security fee	*3.00*
Municipal court technology fee	*4.00*
Juvenile case manager court cost	*5.00*
Arrest fee	*5.00*
Subtotal	*65.00*
Fine	*250.00*
Total	*$315.00*

ALLOCATION AND PRORATION – GENERAL
(Not Under a Code of Criminal Procedure, Article 103.0031 Contract)

The full amount of court costs, fees, and fine is usually collected at one time. However, there are times when installments are made, or when the full amount due is not collected. To ensure proper reporting and remitting of state court costs and fees, the **allocation rule** must be followed.

Allocation Rule

Allocate amounts to court costs and fees first (both state and local) and then to fines (Attorney General Opinion GA-147, 2004). That opinion reads in part:

> "... allocate monies received from a defendant first to pay costs and then to pay a fine. If the monies received do not cover all of the costs, then the monies must be allocated to costs on a pro rata basis."

Examples

The following examples cover various payment possibilities. Assume a defendant was convicted of a speeding offense under Transportation Code, Section 545.352 and is charged $160.00 on January 10 ($98.00 court costs and fees, and $62.00 fine). The $25.00 time payment fee is added where applicable.

Example 1 – Full Amount Paid at Once

Defendant pays full amount of court costs, fees, and fine, at once, on January 10.

Allocation: $98.00 to court costs and fees, $62.00 to fine.

Example 2 – Full Amount Paid in Installments

Defendant pays full amount in four installments (three installments of $50.00 and one of $35.00), on the 15th of each month. The $25.00 time payment fee is added.

January 15	$50.00 received.
February 15	$50.00 received
March 15	$50.00 received. ($123.00 court costs and fees now satisfied; $27.00 applied to fine).
April 15	$35.00 received. Applied to fine.

Example 3 – Total Amount Not Paid

Defendant is supposed to make installments, but the only payment ever made is $50.00, received on March 20.

Allocation: $50.00 to court costs and fees, $0.00 to fine.

Since the full $123.00 (including the $25.00 time payment fee) court costs and fees was not collected, prorate the $50.00 among all the court costs and fees using the following formula:

amount collected / total costs and fees	=	percentage to apply to each cost and fee
50.00 / 123.00	=	40.65% to each cost and fee

40.65%	x	40.00 CCC	=	16.26
40.65%	x	4.00 JRF	=	1.63
40.65%	x	4.00 JSF	=	1.63
40.65%	x	30.00 STF	=	12.19
40.65%	x	3.00 TFC	=	1.22
40.65%	x	3.00 MCBS	=	1.22
40.65%	x	4.00 MCT	=	1.63
40.65%	x	5.00 JCM	=	2.03
40.65%	x	5.00 AF	=	2.03
40.65%	x	25.00 TPF	=	10.16
40.65%	x	123.00	=	50.00

Example 4 – Total Amount Not Paid

Defendant is supposed to make two payments (one for $100.00 on January 20 and one for $85.00 on February 20), but the only payment ever made is $100.00, received on January 20. Since part of what is owed is not paid at least 31 days after the date the judgment is entered, no part of the amount received is allocated to the time payment fee. *However, the appropriate amount would have been allocated to the time payment fee if the February payment had been made because then a payment would have been made at least 31 days after the date the judgment was entered.*

Allocation: $98.00 to court costs and fees, $2.00 to fine.

Example 5 – Part of the Amount Satisfied by Community Service

Defendant receives credit for community service of $100.00, and then on March 30, pays $85.00.

Since the full $123.00 court costs and fees was not collected, prorate the $85.00 among all the court costs and fees using the following formula:

amount collected / total costs and fees	=	percentage to apply to each cost and fee
85.00 / 123.00	=	69.11% to each cost and fee

69.11%	x	40.00 CCC	=	27.64
69.11%	x	4.00 JRF	=	2.76
69.11%	x	4.00 JSF	=	2.76
69.11%	x	30.00 STF	=	20.73
69.11%	x	3.00 TFC	=	2.07
69.11%	x	3.00 MCBS	=	2.07
69.11%	x	4.00 MCT	=	2.76
69.11%	x	5.00 JCM	=	3.46
69.11%	x	5.00 AF	=	3.46
69.11%	x	25.00 TPF	=	17.29
69.11%	x	123.00	=	85.00

Allocation: $85.00 to court costs and fees, $0.00 to fine.

Suggestion

If you have people on installments, try to make the first payment cover the court costs and fees.

ALLOCATION AND PRORATION
CODE OF CRIMINAL PROCEDURE, ARTICLE 103.0031 CONTRACTS

Collection Contracts
Code of Criminal Procedure, Article 103.0031

(a) The commissioners court of a county or the governing body of a municipality may enter into a contract with a private attorney or a public or private vendor for the provision of collection services for one or more of the following items:

(1) debts and accounts receivable such as unpaid fines, fees, court costs, forfeited bonds, and restitution ordered paid by:

(A) a court serving the county or a court serving the municipality, as applicable; or

(B) a hearing officer serving the municipality under Chapter 682, Transportation Code;

(2) amounts in cases in which the accused has failed to appear:

(A) as promised under Subchapter A, Chapter 543, Transportation Code, or other law;

(B) in compliance with a lawful written notice to appear issued under Article 14.06(b) or other law;

(C) in compliance with a lawful summons issued under Article 15.03(b) or other law;

(D) in compliance with a lawful order of a court serving the county or municipality; or

(E) as specified in a citation, summons, or other notice authorized by Section 682.002, Transportation Code, that charges the accused with a parking or stopping offense; and

(3) false alarm penalties or fees imposed by a county under Chapter 118 or 233, Local Government Code, or by a municipality under a municipal ordinance.

(b) A commissioners court or governing body of a municipality that enters into a contract with a private attorney or private vendor under this article may authorize the addition of a collection fee in the amount of 30 percent on each item described in Subsection (a) that is more than 60 days past due and has been referred to the attorney or vendor for collection. The collection fee does not apply to a case that has been dismissed by a court of competent jurisdiction or to any amount that has been satisfied through time-served credit or community service. The collection fee may be applied to any balance remaining after a partial credit for time served or community service if the balance is more than 60 days past due. Unless the contract provides otherwise, the court shall calculate the amount of any collection fee due to the governmental entity or to the private attorney or private vendor performing the collection services and shall receive all fees, including the collection fee. With respect to cases described by Subsection (a)(2), the amount to which the 30 percent collection fee applies is:

(1) the amount to be paid that is communicated to the accused as acceptable to the court under its standard policy for resolution of the case, if the accused voluntarily agrees to pay that amount; or
(2) the amount ordered paid by the court after plea or trial.

(c) The governing body of a municipality with a population of more than 1.9 million may authorize the addition of collection fees under Subsection (b) for a collection program performed by employees of the governing body.

(d) A defendant is not liable for the collection fees authorized under Subsection (b) if the court of original jurisdiction has determined the defendant is indigent, or has insufficient resources or income, or is otherwise unable to pay all or part of the underlying fine or costs.

(e) If a county or municipality has entered into a contract under Subsection (a) and a person pays an amount that is less than the aggregate total to be collected under Subsections (a) and (b), the allocation to the comptroller, the county or municipality, and the private attorney or vendor shall be reduced proportionately.

(f) An item subject to collection services under Subsection (a) and to the additional collection fee authorized by Subsection (b) is considered more than 60 days past due under Subsection (b) if it remains unpaid on the 61st day after the following appropriate date:
(1) with respect to an item described by Subsection (a)(1), the date on which the debt, fine, fee, forfeited bond, or court cost must be paid in full as determined by the court or hearing officer;
(2) with respect to an item described by Subsection (a)(2), the date by which the accused promised to appear or was notified, summoned, or ordered to appear; or
(3) with respect to an item described by Subsection (a)(3), the date on which a penalty or fee is due under a rule or order adopted under Chapter 233, Local Government Code, or an ordinance, policy, procedure, or rule of a municipality.

(g) A county or municipality that enters into a contract under Subsection (a) may not use the additional 30 percent collection fee authorized by Subsection (b) for any purpose other than compensating the private attorney or private vendor who earns the fee.

(h) This section does not apply to the collection of commercial bail bonds.

(i) The commissioners court of a county or the governing body of a municipality may enter into a contract as described in this article to collect a debt incurred as a result of the commission of a criminal or civil offense committed before the effective date of this subsection. The collection fee does not apply to a debt collected pursuant to a contract entered into under this subsection.

(j) A communication to the accused person regarding the amount of payment that is acceptable to the court under the court's standard policy for resolution of a case must include a notice of the person's right to enter a plea or go to trial on any offense charged.

Examples

Assume a defendant was convicted of a speeding offense under Transportation Code, Section 545.352. The offense occurred in March 2006. The city council has entered into a contract with a private vendor in which the collection rate is 30 percent and the amount owed is over 60 days past due. The total amount owed by the defendant is:

Court costs and fees:	
- consolidated court cost	$40.00
- juror reimbursement fee	4.00
- judicial support fee	4.00
- state traffic fine	30.00
- traffic court cost	3.00
- municipal court building security fee	3.00
- municipal court technology fee	4.00
- juvenile case manager court cost	5.00
- arrest fee	5.00
- warrant fee	50.00
- time payment fee	25.00
Court costs and fees	173.00
Fine	120.00
Subtotal	293.00
Collection fee ($293.00 x 30%)	87.90
Total	$380.90

Example 1: A total of $300.00 is received by the city.

Since the full amount of court costs and fees, fine, and collection fee was not received, first determine the amount to allocate to the collection fee, as follows:

$$\frac{\text{amount collected}}{\text{total amount due}} = \text{percentage to apply to the collection fee}$$

$$\frac{300.00}{380.90} = 78.76\%$$

Amount allocated to the collection fee:	
Total collection fee	$87.90
Multiply by	x .7876
Amount allocated to the collection fee	$69.23

Since the amount left after allocation to the collection fee is enough to cover all the court costs and fees, they are satisfied in full, and the balance is applied to the fine, as follows:

Total received	$300.00
Less the amount allocated to the collection fee	- 69.23
Amount left	230.77
Less the amount allocated to the court costs and fees	- 173.00
Amount applied to the fine	$57.77

Example 2: A total of $125.00 is received by the city.

Since the full amount of the court costs and fees, fine, and collection fee was not received, first determine the amount to allocate to the collection fee, as follows:

amount collected / total amount due = percentage to apply to the collection fee

125.00 / 380.90 = 32.82%

Amount allocated to the collection fee:

Total collection fee	$87.90
Multiply by	x .3282
Amount allocated to the collection fee	$28.85

Since the amount left after allocation to the collection fee is not enough to cover all the court costs and fees, prorate the amount left among all the court costs and fees as follows:

Total received	$125.00
Less the amount allocated to the collection fee	- 28.85
Amount left	$96.15

amount left / total costs and fees = percentage to apply to each cost and fee

96.15 / 173.00 = 55.58%

55.58%	x	40.00 CCC	=	22.23
55.58%	x	4.00 JRF	=	2.22
55.58%	x	4.00 JSF	=	2.22
55.58%	x	30.00 STF	=	16.67
55.58%	x	3.00 TFC	=	1.67
55.58%	x	3.00 MCBS	=	1.67
55.58%	x	4.00 MCT	=	2.22
55.58%	x	5.00 JCM	=	2.78
55.58%	x	5.00 AF	=	2.78
55.58%	x	50.00 WF	=	27.79
55.58%	x	25.00 TPF	=	13.90
55.58%	x	173.00	=	96.15

SPECIAL FINE PROVISIONS

Excess Highway Fines and Special Expenses
Transportation Code, Section 542.402

(b) In each fiscal year, a municipality having a population of less than 5,000 may retain, from fines collected for violations of this title and from special expenses collected under Article 45.051, Code of Criminal Procedure, in cases in which a violation of this title is alleged, an amount equal to 30 percent of the municipality's revenue for the preceding fiscal year from all sources, other than federal funds and bond proceeds, as shown by the audit performed under Section 103.001, Local Government Code. After a municipality has retained that amount, the municipality shall send to the comptroller any portion of a fine or a special expense that exceeds $1.

(c) The comptroller shall enforce Subsection (b).

(d) In a fiscal year in which a municipality retains from fines and special expenses collected for violations of this title an amount equal to at least 20 percent of the municipality's revenue for the preceding fiscal year from all sources other than federal funds and bond proceeds, not later than the 120th day after the last day of the municipality's fiscal year, the municipality shall send to the comptroller:

(1) a copy of the municipality's financial statement for that fiscal year filed under Chapter 103, Local Government Code; and

(2) a report that shows the total amount collected for that fiscal year from fines and special expenses under Subsection (b).

(e) If an audit is conducted by the comptroller under Subsection (c) and it is determined that the municipality is retaining more than 20 percent of the amounts under Subsection (b) and has not complied with Subsection (d), the municipality shall pay the costs incurred by the comptroller in conducting the audit.

Example

City fiscal year begins October 1, 2004	
Total city revenue prior fiscal year (10/1/03 – 9/30/04)	*$400,000*
Less federal funds and bond proceeds	*0*
Balance	*400,000*
30% cap for remitting ($400,000 x 30%)	*$120,000*
20% cap for sending two reports within 120 days of city's fiscal year end ($400,000 x 20%)	*$80,000*

Once the city reaches $80,000 in fine revenue for offenses under Transportation Code, Title 7 – Vehicles and Traffic, and special expenses under Code of Criminal Procedure, Article 45.051, for offenses under Transportation Code, Title 7 – Vehicles and Traffic – the city will be required to send the two reports to the Comptroller within 120 days of their fiscal year end.

Once the city reaches $120,000 in fine revenue for offenses under Transportation Code, Title 7 – Vehicles and Traffic, and special expenses under Code of Criminal Procedure, Article 45.051, for offenses under Transportation Code, Title 7 – Vehicles and Traffic – the city can only retain $1 per fine/special expense and the rest has to be remitted to the state.

Offense of Operating or Loading Overweight Vehicle
Transportation Code, Section 621.506

(a) A person commits an offense if the person:
(1) operates a vehicle or combination of vehicles in violation of Section 621.101, 622.012, 622.031, 622.133, 622.593, or 623.162; or
(2) loads a vehicle or causes a vehicle to be loaded in violation of Section 621.503.

(b) An offense under this section is a misdemeanor punishable:
(1) by a fine of not less than $100 and not more than $150;
(2) on conviction of an offense involving a vehicle having a single axle weight, tandem axle weight, or gross weight that is more than 5,000 but not more than 10,000 pounds heavier than the vehicle's allowable weight, by a fine of not less than $300 or more than $500;
(3) on conviction of an offense involving a vehicle having a single axle weight, tandem axle weight, or gross weight that is more than 10,000 pounds heavier than the vehicle's allowable weight, by a fine of not less than $500 or more than $1,000; or
(4) on conviction before the first anniversary of the date of a previous conviction under this section, by a fine in an amount that is twice the amount specified by Subdivision (1), (2), or (3).

(c) On conviction of a violation of an axle weight limitation, the court may assess a fine less than the applicable minimum amount prescribed by Subsection (b) if the court finds that when the violation occurred:
(1) the vehicle was registered to carry the maximum gross weight authorized for that vehicle under Section 621.101; and
(2) the gross weight of the vehicle did not exceed that maximum gross weight.

(d) A judge or justice shall promptly report to the Department of Public Safety each conviction obtained in the judge's or justice's court under this section. The Department of Public Safety shall keep a record of each conviction reported to it under this subsection.

(e) If a corporation fails to pay the fine assessed on conviction of an offense under this section, the district or county attorney in the county in which the conviction occurs may file suit against the corporation to collect the fine.

(f) A justice or municipal court has jurisdiction of an offense under this section.

(g) Except as provided by Subsection (h), a governmental entity that collects a fine under this section for an offense involving a vehicle having a single axle weight, tandem axle weight, or gross weight that is more than 5,000 pounds heavier than the vehicle's allowable weight shall send an amount equal to 50 percent of the fine to the comptroller in the manner provided by Subchapter B, Chapter 133, Local Government Code.

(h) If the offense described by Subsection (g) occurred within 20 miles of an international border, the entire amount of the fine shall be deposited for the purposes of road maintenance in:

(1) the municipal treasury, if the fine was imposed by a municipal court; or

(2) the county treasury, if the fine was imposed by a justice court.

Comment

These fines are reported to the state quarterly by the custodian of money in the city treasury.

Example 1

Assume a defendant is convicted of the offense over gross weight and the vehicle is 6,000 pounds over the allowable weight. Assume the offense occurred in January 2006, but did not occur within 20 miles of an international border. Also assume the city has adopted the municipal court building security fee, the maximum municipal court technology fee, the maximum juvenile case manager court cost, and the judge sets the fine at $400. What court cost, fee, and fine amounts should be charged?

Consolidated court cost	*$40.00*
Juror reimbursement fee	*4.00*
Judicial support fee	*4.00*
Municipal court building security fee	*3.00*
Municipal court technology fee	*4.00*
Juvenile case manager court cost	*5.00*
Arrest fee	*5.00*
Subtotal	*65.00*
Fine	*400.00*
Total	*$465.00*
Amount of fine to be reported and remitted to the state ($400.00 x 50%)	*$200.00*

Example 2

Assume the defendant in Example 1 is convicted of the same offense within one year of the first conviction and the judge doubles the previous fine. What court cost, fee, and fine amounts should be charged?

Consolidated court cost	*$40.00*
Juror reimbursement fee	*4.00*
Judicial support fee	*4.00*
Municipal court building security fee	*3.00*
Municipal court technology fee	*4.00*
Juvenile case manager court cost	*5.00*
Arrest fee	*5.00*
Subtotal	*65.00*
Fine	*800.00*
Total	*$865.00*
Amount of fine to be reported and remitted to the state ($800.00 x 50%)	*$400.00*

Child Passenger Safety Seat Systems
Transportation Code, Section 545.412

(a) A person commits an offense if the person operates a passenger vehicle, transports a child who is younger than five years of age and less than 36 inches in height, and does not keep the child secured during the operation of the vehicle in a child passenger safety seat system according to the instructions of the manufacturer of the safety seat system.

(b) **An offense under this section is a misdemeanor punishable by a fine of not less than $100 or more than $200.**

(c) It is a defense to prosecution under this section that the person was operating the vehicle in an emergency or for a law enforcement purpose.

(d) Repealed by Acts 2003, 78th Leg., ch. 204, §8.01.

(e) This section does not apply to a person:

(1) operating a vehicle transporting passengers for hire, including third-party transport service providers when transporting clients pursuant to a contract to provide nonemergency Medicaid transportation; or

(2) transporting a child in a vehicle in which all seating positions equipped with child passenger safety seat systems or safety belts are occupied.

(f) In this section:

(1) "Child paseenger safety seat system" means an infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.

(2) "Passenger vehicle" means a passenger car, light truck, sport utility vehicle, truck, or truck tractor.

(3) "Safety belt" means a lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(4) "Secured," in connection with use of a safety belt, means using the lap belt and any shoulder straps according to the instructions of:

(A) the manufacturer of the vehicle, if the safety belt is original equipment; or

(B) the manufacturer of the safety belt, if the safety belt has been added to the vehicle.

(g) A judge, acting under Article 45.0511, Code of Criminal Procedure, who elects to defer further proceedings and to place a defendant accused of a violation of this section on probation under that article, in lieu of requiring the defendant to complete a driving safety course approved by the Texas Education Agency, shall require the defendant to attend and present proof that the defendant has successfully completed a specialized driving safety course approved by the Texas Education Agency under the Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes) that includes four hours of instruction that encourages the use of child passenger safety seat systems and the wearing of seat belts and emphasizes:

(1) the effectiveness of child passenger safety seat systems and seat belts in reducing the harm to children being transported in motor vehicles; and

(2) the requirements of this section and the penalty for noncompliance.

(h) **Notwithstanding Section 542.402(a), a municipality or county, at the end of the municipality's or county's fiscal year, shall send to the comptroller an amount equal to 50 percent of the fines collected by the municipality or the county for violations of this section. The comptroller shall deposit the amount received to the credit of the tertiary care fund for use by trauma centers.**

Safety Belts
Transportation Code, Section 545.413

(a) A person commits an offense if the person:

(1) is at least 15 years of age;

(2) is riding in the front seat of a passenger car while the vehicle is being operated;

(3) is occupying a seat that is equipped with a safety belt; and

(4) is not secured by a safety belt.

(b) A person commits an offense if the person:

(1) operates a passenger car or light truck that is equipped with safety belts; and

(2) allows a child who is younger than 17 years of age and who is not required to be secured in a child passenger safety seat system under Section 545.412(a) to ride in the vehicle without requiring the child to be secured by a safety belt, provided the child is occupying a seat that is equipped with a safety belt.

(c) A passenger car or a seat in a passenger car is considered to be equipped with a safety belt if the vehicle is required under Section 547.601 to be equipped with safety belts.

(d) **An offense under Subsection (a) is a misdemeanor punishable by a fine of not less than $25 or more than $50. An offense under Subsection (b) is a misdemeanor punishable by a fine of not less than $100 or more than $200.**

(e) It is a defense to prosecution under this section that:

(1) the person possesses a written statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;

(2) the person presents to the court, not later than the 10th day after the date of the offense, a statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;

(3) the person is employed by the United States Postal Service and performing a duty for that agency that requires the operator to service postal boxes from a vehicle or that requires frequent entry into and exit from a vehicle;

(4) the person is engaged in the actual delivery of newspapers from a vehicle or is performing newspaper delivery duties that require frequent entry into and exit from a vehicle;

(5) the person is employed by a public or private utility company and is engaged in the reading of meters or performing a similar duty for that company requiring the operator to frequently enter into and exit from a vehicle; or

(6) the person is operating a commercial vehicle registered as a farm vehicle under the provisions of Section 502.163 that does not have a gross weight, registered weight, or gross weight rating of 48,000 pounds or more.

(f) The department shall develop and implement an educational program to encourage the wearing of safety belts and to emphasize:

(1) the effectiveness of safety belts and other restraint devices in reducing the risk of harm to passengers in motor vehicles; and

(2) the requirements of this section and the penalty for noncompliance.

(g) In this section, "passenger vehicle," "safety belt," and "secured" have the meaning assigned by Section 545.412.

(h) A judge, acting under Article 45.0511, Code of Criminal Procedure, who elects to defer further proceedings and to place a defendant accused of a violation of Subsection (b) on probation under that article, in lieu of requiring the defendant to complete a driving safety course approved by the Texas Education Agency, shall require the defendant to attend and present proof that the defendant has successfully completed a specialized driving safety course approved by the Texas Education Agency under the Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes) that includes four hours of instruction that encourages the use of child passenger safety seat systems and the wearing of seat belts and emphasizes:

(1) the effectiveness of child passenger safety seat systems and seat belts in reducing the harm to children being transported in motor vehicles; and

(2) the requirements of this section and the penalty for noncompliance.

(i) **Notwithstanding Section 542.402(a), a municipality or county, at the end of the municipality's or county's fiscal year, shall send to the comptroller an amount equal to 50 percent of the fines collected by the municipality or the county for violations of Subsection (b) this section. The comptroller shall deposit the amount received to the credit of the tertiary care fund for use by trauma centers.**

Comments

These fines are reported to the state annually by the custodian of money in the city treasury. Reports are due by the last day of the month following the city's fiscal year.

Example 1

Assume a defendant is convicted of Failure to Secure Child in Safety Seat System [Transportation Code, Section 545.412(a)]. The offense occurred in March 2006. Also assume the city has adopted the municipal court building security fee, the maximum municipal court technology fee, the maximum juvenile case manager court cost, and the judge imposes the minimum fine. What court cost, fee, and fine amounts should be charged?

Consolidated court cost	*$40.00*
Juror reimbursement fee	*4.00*
Judicial support fee	*4.00*
State traffic fine	*30.00*
Traffic court cost	*3.00*
Municipal court building security fee	*3.00*
Municipal court technology fee	*4.00*
Juvenile case manager court cost	*5.00*
Arrest fee	*5.00*
Subtotal	*98.00*
Fine	*100.00*
Total	*$198.00*

Example 2

Assume a defendant is convicted of Ride Not Secured by Safety Belt [Transportation Code, Section 545.413(a)]. The offense occurred in March 2006. Also assume the city has adopted the municipal court building security fee, the maximum municipal court technology fee, the maximum juvenile case manager court cost, and the judge imposes the maximum fine. What court cost, fee, and fine amounts should be charged?

Consolidated court cost	*$40.00*
Juror reimbursement fee	*4.00*
Judicial support fee	*4.00*
State traffic fine	*30.00*
Traffic court cost	*3.00*
Municipal court building security fee	*3.00*
Municipal court technology fee	*4.00*
Juvenile case manager court cost	*5.00*
Arrest fee	*5.00*
Subtotal	*98.00*
Fine	*50.00*
Total	*$148.00*

ACCOUNTING AND REPORTING

Accounting For In the Courts

The bookkeeping system for the court should be able to show the following for each cost/fee:

- date received;
- amount received;
- from whom received;
- number of the receipt issued;
- when remitted; and
- to whom remitted.

Additionally, there should be documentation to support all jail time and community service credits.

The laws do not require:

- each cost/fee be put in a separate bank account; or
- costs/fees be deposited in non-interest bearing accounts.

As with other collections there should be a sound system of internal controls in the office. Appropriate procedures should be followed to provide a good audit trail. The procedures should provide for:

- use and control of pre-numbered forms;
- cross-referencing of documents;
- periodic reconciliation of subsidiary records to control totals;
- proper authorization of transactions;
- safeguarding of assets;
- appropriate flow of documents;
- reasonable amount of checking work of others; and
- bonding of all employees with access to cash and other valuables.

One way to account for costs and fees is to have a separate column for each one. Arrest fees should additionally be broken down further depending upon whether a state or local peace officer performed the service.

Accounting For In the Treasury

Treasurers also have to account for each cost/fee separately.

They should be able to show the following and have supporting source documents:

- date received;
- amount received;
- from whom received;
- number of the receipt issued;
- the period the funds received cover;
- when remitted;
- amount remitted; and
- to whom remitted.

The laws do not require:

- each cost/fee be put in a separate fund (exceptions are the municipal court building security fund, the municipal court technology fund, and the juvenile case manager fund);
- each cost/fee be put in a separate bank account; or
- costs/fees be deposited in non-interest bearing accounts.

Amounts due to the state should be recorded as liabilities, rather than revenues. This is true whether the amounts are recorded in the general fund or some other fund.

Perhaps the best way to account for costs/fees in the city treasurer's office is by using an agency fund.

- an agency fund is a self-balancing set of accounts used to account for assets held by a governmental unit as an agent for individuals, private organizations, other governmental units, and/or other funds.

- in this case the assets are held for another government (the state) and other funds (e.g., general fund, municipal court building security fund, municipal court technology fund, juvenile case manager fund).

- when amounts are remitted to the state, the city's share is transferred to the applicable fund(s).

Treasurers should always give a receipt to a person turning in money.

Reporting and Remitting

BASIC STATE COURT COSTS/FEES AND MOTOR CARRIER WEIGHT VIOLATION FINES

The city treasurer is responsible for reporting and remitting to the state.

Timely reporting and remitting is important because a city's retention of administrative fees hinge on it.

Reporting and remitting is on a calendar quarter basis. The reports and remittances are due by the last day of the month following each calendar quarter as follows:

Quarter	Period Covered	Report Due By
First	January – March	April 30th
Second	April – June	July 31st
Third	July – September	October 31st
Fourth	October – December	January 31st

The report form is mailed out to each city before the end of each quarter – more than a month before the report is due. The following pre-printed information is on the mailed-out form:

- city identification number;
- city name and mailing address;
- due date of the report; and
- period the report covers.

EXCESS HIGHWAY FINES

Reports and remittances are due by the last day of the month following each calendar quarter. However, a remittance report is not required to be filed until money is due. For example, if money first becomes due in May, it would be included on the second quarter report covering April through June and be due by the end of July.

CHILD SAFETY SEAT AND SEAT BELT VIOLATION FINES

Reports and remittances are due by the last day of the month following the end of the city's fiscal year. For example, if a city's fiscal year ends on September 30th, the report and remittance would be due by October 31st.

QUESTIONS AND EXERCISES

True / False

Answer true or false for each of the following:

1. Arrest fees for services of local peace officers are optional. _____

2. Court costs and fees are due on cases where a driving safety course is taken under Code of Criminal Procedure, Article 45.0511(b) but are not due on cases where a course is taken under Code of Criminal Procedure, Article 45.0511(d). _____

3. Court costs and fees are not due on deferred disposition cases under Code of Criminal Procedure, Article 45.051. _____

4. Court costs and fees are due on tobacco awareness program cases under Health and Safety Code, Section 161.253. _____

5. The court can exempt a defendant from paying the basic state court costs and fees for cases disposed of under the teen court provisions in Code of Criminal Procedure, Article 45.052. _____

6. Court costs and fees do apply to offenses where an alcohol awareness course is taken under Alcoholic Beverage Code, Section 106.115. _____

7. The amount to assess for the consolidated court cost varies, depending upon the possible amount of the fine. _____

8. All interest earnings on court costs and fees have to be sent to the state. _____

9. The $30.00 state traffic fine does not apply to the offense of failure to maintain financial responsibility, but does apply to the offense of an expired inspection certificate. _____

10. The time payment fee would not apply if the defendant made four payments within 30 days of the entry of the judgment. _____

11. Before the municipal court technology fee can be charged, the city council must pass the required ordinance _____

12. For conviction of all child passenger safety seat system and safety belt offenses, the city has to send 50% of the fine to the Comptroller each year. _____

Court Cost / Fee Amounts

Using the charts on pages 5 and 8, what should total court costs and fees be for conviction of the following offenses? Assume the city has adopted the $3.00 fee for municipal court building security, a $4.00 fee for municipal court technology, and a $5.00 fee for a juvenile case manager. Assume the only fee for services of peace officers is the $5.00 arrest fee under Code of Criminal Procedure, Article 102.011.

		Offense In September 2005	Offense In January 2006
13.	Possession of alcohol by a minor – first conviction Alcoholic Beverage Code, Section 106.05	$_____	$_____
14.	Failure to appear Penal Code, Section 38.10	$_____	$_____
15.	Disorderly conduct Penal Code, Section 42.01	$_____	$_____
16.	No valid driver's license Transportation Code, Sections 521.021, 521.025	$_____	$_____
17.	No motorcycle protective headgear Transportation Code, Section 661.003	$_____	$_____
18.	Double parked Transportation Code, Section 545.302	$_____	$_____
19.	Not wearing safety belt Transportation Code, Section 545.413	$_____	$_____
20.	Expired motor vehicle inspection certificate Transportation Code, Section 548.602	$_____	$_____
21.	Violation of promise to appear Transportation Code, Section 543.009	$_____	$_____
22.	Speeding Transportation Code, Section 545.352	$_____	$_____
23.	Failure to maintain financial responsibility Transportation Code, Section 601.191	$_____	$_____

24. Passing a school bus $_____ $_____
Transportation Code, Section 545.066

25. Municipal ordinance violation where fine cannot exceed $500.00 $_____ $_____
Local Government Code, Section 54.001

26. Municipal ordinance violation where fine cannot exceed $2,000.00 $_____ $_____
Local Government Code, Section 54.001

Allocation and Proration

Determine the proper allocation and proration of court costs, fees, and fine. Assume that on January 20, 2006 the defendant was convicted of the offense Disorderly Conduct under Penal Code, Section 42.01 and was charged $185.00 ($65.00 court costs and fees, $120.00 fine). Add the $25.00 time payment fee where applicable. A private attorney or vendor is not involved.

27. Defendant pays full amount in three $70.00 installments, on the 20th of each month, beginning January 20th.

January 20th payment
Court costs and fees $_____
Fine _____
Total payment $_____

February 20th payment
Court costs and fees $_____
Fine _____
Total payment $_____

March 20th payment
Court costs and fees $_____
Fine _____
Total payment $_____

28. The only payment ever made by the defendant is $75.00, received on January 20th.

January 20th payment
Court costs and fees $_____
Fine _____
Total payment $_____

29. The defendant performs two days of community service at $50.00 a day and then pays $55.00 on February 20th.

February 20th payment	
Court costs and fees	$_____
Fine	_____
Total payment	$_____

30. The only payment ever made by the defendant is $100.00, received on February 25th.

February 25th payment	
Court costs and fees	$_____
Fine	_____
Total payment	$_____

WHY YOU SHOULD BE CONCERNED ABOUT FINANCIAL MANAGEMENT

When it comes to money and other property, your financial management system should show you have done things right. Your system should show four things:

1. **That you have collected all the money or other property that you are entitled to.**
2. **That money collected was properly remitted to the appropriate party.**
3. **That all money and other property is properly managed.**
4. **That all money and other property is properly expended, properly accounted for, and properly reported.**

The bottom line is that you want to be accountable to the public. They expect and deserve sound financial management from city officials and employees. But you also want to have a system that protects you and others in the court. Frequently it is instances where someone thinks something may have been done wrong (and your system cannot show otherwise), rather than instances where money is actually missing that causes the most grief.

And if you have a small office (three or less people), you are faced with special challenges. In fact, some people are going to be more likely to "suspect" you of possible wrongdoing just because you are in a small office. Take whatever steps are sound and practical to prevent unnecessary suspicion from being cast in the direction of the court.

Why take any chances?

IMPORTANCE OF INTERNAL CONTROL

The importance of internal control relates to both money and people.

Money

A sound system of internal control should:

- minimize the possibilities for errors and misuse of funds;
- provide a clear audit trail (show who did what and when they did it); and
- provide for earlier detection of errors and/or irregularities than would otherwise be the case.

People

Most thoughts relating to internal control completely overlook the "people" component, which in the long run often proves more important than the money side. That means an internal control system should protect the people who do their job and do it right.

The vast majority of people who **are not** involved in major errors and/or irregularities:

- deserve to work in an office/organization that has an internal control system that can show their innocence when errors and/or irregularities occur; and
- do not deserve to be clouded with "unnecessary suspicion."

Not protecting honest employees from "unnecessary suspicion" or improperly accusing them of errors and/or irregularities can have disastrous long-term results. One of the following could happen:

- an employee may feel he might as well take money since everyone seems to think he did anyway, or
- an employee's performance will take a nose-dive.

BASIC PRINCIPLES OF INTERNAL CONTROL

"Internal control" is the plan of organization and procedures in the municipal court. A sound system of internal control is very important in order to minimize the possibilities for errors and misuse of funds. Good internal control in a municipal court also makes the work of both the internal auditor and independent auditor easier and less time consuming.

Four Basic Principles of Internal Control

The four basic principles behind every system of good internal control are:

1. Appropriate division of duties;
2. Qualified personnel;
3. Sound procedures for authorizing, recording, and reporting transactions; and
4. Actual performance consistent with the first three principles.

Appropriate Division of Duties

If possible, three basic functions should be performed by three different people in a municipal court:

1. Authorization (approval) of transactions;
2. Recording of transactions; and
3. Custody of assets (cash and other property).

For example, a clerk making collections and issuing receipts (having custody of assets) should not be the person to balance and prepare the bank deposit (approving the day's receipts), and neither of these persons should record the day's receipts in the cash receipts journal.

If one person does perform two, or all three of these functions, there is no independent check for mistakes, and errors are likely to go undiscovered for long periods. Fraud is also much easier if, for example, the same person collects cash, prepares the bank deposit and/or records the receipts in the books.

In many municipal courts, it is often not practical to maintain a strict separation of duties due to a limited staff size. If such is the case, other means will take on added importance in helping assure reliable internal control. For example:

1. Rotation of duties among personnel;
2. More strict supervision;
3. Special double-checking of work;
4. Enforced vacations;
5. Additional training to improve quality of work; and
6. More frequent internal audits.

Also, a reasonably good separation of duties can be maintained with just two persons. For example, when money is received:

Person A	Person B
1. Payment received and receipt issued.	2. Deposit slip prepared (matched against receipts and cash drawer balance).
3. Deposit made.	4. Receipts posted to Receipts Journal (and docket book if applicable).
5. Deposit total matched against total posted to Receipts Journal.	

The basic principle to remember is that **no person should handle a transaction from beginning to end.**

Qualified Personnel

Staff positions should naturally be filled with the most qualified and competent persons possible. Under-qualified persons tend to be less able to perform their duties without undue errors. Special training may help here.

All personnel should know exactly what they are supposed to do and how they are supposed to do it. Additionally, all personnel should understand how their duties fit in with the duties of others in the municipal court, and with duties of other offices in the city.

Sound Procedures

All municipal courts should have logical, consistent procedures that describe in detail the duties that must be performed, how they are to be performed, and who is to perform them. If personnel clearly understand what is expected of them, they will tend to do a better, more accurate job. Also, errors will be fewer, and chances of fraud will be less if each person understands what she should be doing. Procedures should be developed in cooperation with the city auditor and city treasurer and should provide for:

1. Use and control of pre-numbered forms;
2. Cross-referencing of documents (citation numbers, docket numbers, receipt numbers);
3. Periodic reconciliation of subsidiary records to control totals;
4. Proper authorization of transactions;
5. Effective, timely reporting of transactions;
6. Safeguarding of assets;
7. Appropriate flow of documents;
8. Reasonable amount of checking work of others; and
9. Bonding of all employees with access to cash and other valuables.

Actual Performance

A good system of division of duties, qualified personnel, and sound, written procedures, will not guarantee good internal control – the system must be followed. Results must be periodically monitored to see if the system is working as it should.

BASICS OF RECEIPTS AND DISBURSEMENTS

1. Money must be deposited in city depository(ies).
2. Always use chronological, pre-numbered receipts for all intakes of money.
3. Maintain strict control over all receipts – both issued and unissued.
4. Receipts should have at least three parts – payor, office, and auditor/treasurer.
5. Separate cash box/drawer/register for each person taking in money.
6. Strict control over access to cash.
7. Work mail independently of over-the-counter receipts, making a separate listing of mail receipts.
8. Put restrictive endorsements on checks as soon as received.
9. Receipt forms should contain space for mode of payment (cash, check, money order, credit card) and space to indicate the number of the check or money order.
10. Receipt forms should be signed/initialed by person receiving money.
11. Put cause numbers on receipt forms.
12. Make daily remittances/bank deposits.
13. Make all disbursements with a check (no cash disbursements).
14. Obtain a receipt for all remittances.
15. Never pre-sign checks.
16. Never make checks payable to cash/bearer.
17. Put cause numbers on all refund checks.
18. Put all appropriate cross-references in docket books (receipt numbers, check numbers, citation numbers).
19. Develop a procedures manual for the court showing who does what, when, and how.
20. Have periodic audits (both internal and external).

RECEIPTS

Each office should have a process which ensures that all money received by the office is properly processed, deposited, and accounted for.

General Procedures

1. Maintain chronological, pre-numbered receipts.
2. Prepare a three-part receipt for each intake of money.
   a. Issue the original to the payor;
   b. Forward the second part to the city auditor, or to the city treasurer if there is no city auditor; and
   c. Retain the third part in the municipal court for accounting and internal auditing purposes.
3. Maintain strict control over access to money, and maintain a secure area for the storage of money on hand.
4. Have a separate cash box/drawer/register for each employee receiving money, who should be responsible for initially balancing out at the close of each business day.
5. Organize all receipts chronologically and forward to appropriate personnel for preparing the bank deposit or remittance to the treasurer and making the necessary bookkeeping entries.
6. Make a daily bank deposit if money is not remitted to the city treasurer daily.
7. Remit collections to the city treasurer in a timely manner.
8. Prepare and submit monthly reports to appropriate parties.

MAIL COLLECTIONS

Proper management of mail collections is particularly important because the payor is not present, and no receipt is issued at the time of collection. The goals concerning mail collections are to establish a clear-cut audit trail and ensure and document the proper handling of mail collections.

Procedures

1. Open all mail daily.
2. All mail should be opened by one person and all checks and currency removed prior to further distribution.
3. If possible, the person opening the mail should not be the same person who handles other receipts of money.
4. List all currency and checks received on a daily mail collection report in sufficient detail to identify the person from whom the money was received, the amount received, the check number (or if cash received, so note), and the docket number, if applicable.
5. Stamp all checks **For Deposit Only,** including the appropriate account number.
6. Continue with regular procedures for receipts.

Note: Mail receipts should be deposited or remitted daily just like receipts received over-the-counter. **It is important to stay current on working mail.**

THE RECEIPT FORM

A receipt should be prepared each time money is received. For internal control purposes, receipts should be chronologically pre-numbered.

The receipt should have at least three parts – the original and two duplicates as follows:

- the original should be issued to the person making the payment;
- the second part should be forwarded to the city auditor, or the city treasurer if there is no city auditor; and
- the third part should be retained by the municipal court for accounting and internal auditing purposes.

Information to Include

For accounting and auditing purposes, the receipt should provide space for the following information:

- date;
- docket number;
- amount received;
- who the money is being received from;
- what the money is being received for;
- method of payment (i.e. cash, check, money order, credit card);
- name of the city with the words Municipal Court;
- signature or initials of individual preparing the receipt; and
- any other information relevant in the circumstances.

HANDLING MONEY

Internal controls surrounding collections can be strengthened by following certain money handling procedures. They include:

1. A separate cash box/drawer/register for each person receiving money.
2. Lock up money and receipts when not in use.
3. Never leave your cash drawer unattended when it is not locked.
4. Never allow anyone access to your cash drawer except under your direct supervision.
5. Start off each day with the same change fund amount.
6. Verify the beginning change fund amount each day before handling transactions.
7. Arrange currency and coins in your cash drawer in a consistent manner.
8. Put away currency and coins from the previous transaction before starting a new one.
9. Do not put money received away (in the box/drawer/register) until change is made.
10. In counting cash:
    a. Separate the currency from the coins;
    b. Count the currency before the coins;
    c. Separate currency into denominations;
    d. Count each currency denomination separately;
    e. Separate coins into denominations;
    f. Count each denomination of coins separately;
    g. Count cash and currency in the presence of the person making payment; and
    h. Count the money as many times as necessary to come up with the same amount twice.

DAILY BALANCING

Receipts should be balanced out daily. This is done by adding the receipts issued during the day – which should equal the amount of money in the cash drawer less the amount kept in the drawer to make change. Consider the following format:

CASHIER RECONCILIATION FORM
City of _____ Municipal Court
For the Date of _____

CASH AND CURRENCY **RECAP**

Denomination	Amount
.01	_____
.05	_____
.10	_____
.25	_____
.50	_____
1.00	_____
5.00	_____
10.00	_____
20.00	_____
50.00	_____
100.00	_____
Total	_____

Cash and Currency	_____
Checks / Money Orders / Other	_____
Total Monies on Hand	_____
Less Change Fund Amount	_____
Total Monies on Hand (Excluding Change Fund Amount)	_____
Receipts To Account For	_____
Overage (Shortage)	_____

RECEIPTS TO ACCOUNT FOR

Beginning Receipt No.	Ending Receipt No.	Batch Total
_____	_____	_____
_____	_____	_____
_____	_____	_____
Total		_____

CHECKS / MONEY ORDERS / OTHER

Source	Amount	Source	Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
		Total	_____

ADDITIONAL INFORMATION

Beginning change fund amount verified	_____	Unissued receipts verified	_____

_____
Signature / Date / Time

INSTALLMENT PAYMENTS

Code of Criminal Procedure, Article 45.041

(a) The judgment and sentence, in case of conviction in a criminal action before a justice of the peace or municipal court judge, shall be that the defendant pay the amount of the fine and costs to the state.

(b) The justice or judge may direct the defendant:

(1) to pay:

(A) the entire fine and costs when sentence is pronounced;

(B) to pay the entire fine and costs at some later date; or

(C) to pay a specified portion of the fine and costs at designated intervals;

(2) if applicable, to make restitution to any victim of the offense in an amount not to exceed $500; and

(3) to satisfy any other sanction authorized by law.

(c) The justice or judge shall credit the defendant for time served in jail as provided by Article 42.03. The credit shall be applied to the amount of the fine and costs at the rate provided by Article 45.048.

(d) All judgments, sentences, and final orders of the justice or judge shall be rendered in open court.

Comments

Where installment or partial payments are received, a municipal court should have:

1. A written description of under what circumstances installment or partial payments can occur.
2. A control amount or total for all outstanding payments.
3. A system for ensuring that outstanding amounts are indicated in subsidiary records.
4. A system for periodically comparing the control amount with subsidiary records.
5. A system for indicating past due amounts.
6. Procedures for following up on past due amounts.

BOOKKEEPING - RECEIPTS

If a manual bookkeeping system is used, a receipts journal is needed to account for individual receipts issued. The journal enables the office to:

- keep track of and account for each receipt issued;
- separate and account for the different types of monies collected;
- group collections in order to figure the total collections by type;
- balance daily and monthly reports;
- help reconcile the monthly bank statement; and
- leave a good audit trail for internal and external auditors.

The receipts journal should be maintained on a daily basis. The journal should include:

- date of transaction;
- description of payor;
- docket number;
- receipt number;
- an actual column to keep up with the total amount received; and
- separate columns to indicate how the money is allocated.

QUESTIONS

1. A municipal court financial management system should show that money collected was properly remitted to the appropriate party and that all money and other property is properly managed.

_____

2. A sound system of internal control should provide a clear audit trail and minimize the possibilities for errors and misuse of funds.

_____

3. An appropriate division of duties and sound procedures for authorizing, recording, and reporting transactions are basic principles of internal control.

_____

4. The three functions that should be appropriately divided are: (a) custody of assets; (b) watching of transactions; and (c) recording of transactions.

_____

5. One of the most important things to remember about internal control is that the same person should handle a transaction from beginning to end.

_____

6. Cross-referencing of documents is not necessary where pre-numbered forms are used and controlled.

_____

7. Chronological, pre-numbered receipts should be used for all intakes of money.

_____

8. A separate cash box / drawer / register for each person taking in money is not necessary if receipts are being signed or initialed by the person receiving the money.

_____

9. A receipt should be obtained for all remittances.

_____

10. The change fund amount should be verified at the beginning of each day.

_____

11. In counting cash, one should count the money as many times as necessary to come up with the same amount twice.

_____

12. It is preferable for a clerk making collections and issuing receipts to also prepare and approve the bank deposit (or remittance to the city treasurer).

_____

13. As long as a municipal court is audited every year, fraud is impossible.

_____

14. When a strict separation of duties cannot be maintained because of a limited staff size, means such as rotation of duties, more strict supervision, and more frequent internal audits, take on added importance in helping maintain reliable internal control.

_____

15. Restrictive endorsements on checks are not necessary if money is turned into the city treasurer daily.

_____

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TEXAS COURT OF CRIMINAL APPEALS

TEXAS MUNICIPAL COURTS EDUCATION CENTER

1609 SHOAL CREEK BOULEVARD, SUITE 302 AUSTIN, TEXAS 78701
TELEPHONE (512) 320-8274
1-800-252-3718
FAX (512) 320-0996

SETTING BONDS

Presented by

Katherine Peake
Municipal Judge
Fredericksburg

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

1. Describe the purpose and use of bond.
2. Apply conditions to personal bond as authorized by law.
3. Set appropriate bond amounts in individual cases.

Setting Bond

Judge Katherine Peake

11/30/2005 1

Objectives

- Identify and understand the three types of bail bonds
- Understand time frames to setting bail
- Understand issues in determining;
  - Bail amounts
  - Conditions of release on bond
- Know where to find applicable statutes

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Authority to Set Bonds as Magistrate

- Who? All judges- Art. 2.09, C.C.P.
- Where? Anywhere in your County. (Gilbert v. State, 493 S.W.2d 783)
- What? Magistrate Functions include setting bail (see list)

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15.17 Hearing (Magistration)

- Determine probable cause (if no warrant)
- Advise of charge (punishments Art. 12 P.C.)
- Read Miranda warnings
- Advise of right to counsel & appointment
- **DETERMINE BAIL**
- Consulate warnings, if necessary
- Take plea, if appropriate and desired

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Not Arraignment

Arraignment- CCP Art. 26.01 to 26.15

According to the Court of Criminal Appeals of Texas.....

"while the procedure described in Art. 15.17 might be called "arraignment" in other jurisdictions or by the news media, it is not arraignment in Texas"

(Watson v. State 762 S.W.2nd 591)

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Bail & Bail Bond Definitions

- Art. 17.01 CCP (Bail) The security given by accused that he will appear..., includes bail bond or personal bond
- Art. 17.02 CCP (Bail Bond) A written undertaking entered into by the defendant and his sureties for the appearance of the principal ..before some court .. to answer a criminal accusation.
- Art. 17.08 CCP Requisites of Bail Bond

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Types of Bail Bonds

- Bail Bond (Art. 17.02 CCP)

  (Surety) written undertaking entered into by the defendant and his sureties (usually bail bond companies, but not always).

  (Cash) "custodian of the funds of the court" hold the cash, ($$$)
- Personal Bond (Art. 17.03 CCP)

  Release without sureties

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Time Limits

- Art. 15.17(a) CCP – "...the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but NOT LATER THAN 48 HOURS after the person is arrested, take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, ... before a magistrate in any other county of this state.

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If Magistrate doesn't determine Probable Cause

- Art. 17.033- (Arrests without warrant only) If no probable cause determination made by Magistrate;
  - w/i 24 hrs. of arrest, bond not to exceed $5,000 shall be set in misdemeanor cases
  - w/i 48 hrs. of arrest, bond not to exceed $10,000 shall be set in felony cases

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Setting Bail-Guidelines

- US and TX Constitution say "excessive bail shall not be required..."
- Art. 17.15 C.C.P. – guidelines
  - High enough to assure appearance
  - Not too high, not "instrument of oppression"
  - Consider nature and circumstances of offense
  - Ability to make bail
  - Safety of the victim and community

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What should I consider?

- Risk of Flight (community ties, prior appearances, financial situation)
- Danger to Public (criminal history, risk to community)
- Nature & seriousness of offense, range of punishment

ASK THE DEFENDANT, JAILERS, ETC.

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Bond Amounts

- What about a schedule?
  (DM-57; 1991)
- How do I start?
- Ex Parte Durst, $1 billion is too high.

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Personal Bond Limitations 17.03 CCP

- Only Court where charge is pending may approve Personal Bonds for

  -Cap. Murder, Agg. Kidnapping, Agg. Sex. Assault., Deadly Ass. On Law Officer, Injury to Child, Elderly or Disabled, Agg. Robbery, Burg, Organized Crime

  -Offenses of Health & Safety Code & TX Controlled Substance Act which are punished for min. term or maximum fine that is more than min. term or max. fine for 1st degree felony.

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Reasonable Conditions of Bail

- Art. 17.40 C.C.P ...MAY impose ....
- In writing, acknowledged and understood.
- Examples; electronic monitoring, home curfew, drug testing (17.43 & 17.44 C.C.P), counseling or education for HIV (17.45 C.C.P), no contact order if stalking is charge (17.46 C.C.P) (SEE CHART)

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Ignition Interlock Device

- Art. 17.441 C.C.P
- If charge is Subsequent "Driving, Flying or Boating While Intoxicated" the magistrate SHALL require on release.....
- But then see 17.441(b)- "May not require..if... not be in the best interest of justice".
- DPS monitors vendors- www.txdps.state.tx.us/bat/index.htm

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Bail condition when victim is 12 or younger

- Art. 17.41 C.C.P. – MANDATORY
- Offenses; Sexual Assault (PC Ch.21) Assaults (PC Ch.22) , Sexual Performance by Child (PC Ch.43.25)
- Defendant may not
  - Directly communicate w/ alleged victim
  - Go near residence, school, or other location frequented by alleged victim

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So, can I....?

- Require only cash? (Ex parte Deaton, 582 SW2d 151, JM-363 (1985) (but see Art. 23.05 C.C.P, only when bail forfeiture has been declared)
- Split bond? (Part surety/part personal/part cash)
- Set bond over the phone?
- Change a bond?

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So, can I..... ? continued

- Forfeit a cash bond and make it the fine? (See Art. 45.044 C.C.P.)
- Magistrate several people at once?
- Hold a bond until all fines are paid? (JC-0024 and Art. 17.02 C.C.P.)

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Resources & Other Good Stuff

- AG Opinions www.oag.state.tx.us
- Laws www.capitol.state.tx.us
- Judges www.info.courts.state.tx.us
- Zip Codes www.usps.com
- TX Resources www.tlsc.org
- Language services www.att.com
  www.lle-inc.com

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DUTIES & RESPONSIBILITIES OF THE TEXAS MAGISTRATE

Presented by

Robin A. Ramsay
Presiding Municipal Judge
Denton

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

1. Identify a magistrate's duties and the authority for them.
2. Distinguish between the different types of warrants and their applicability.
3. Outline the judge's authority to issue arrest warrants, search warrants, fire, health and safety warrants.
4. Make probable cause determinations based on the elements that must appear in a warrant such as identification and descriptions.
5. Apply the 4th Amendment to the U.S. Constitution and Article I, Sec. 9 of the Texas Constitution to probable cause determinations.
6. Properly warn a defendant in accordance with Art. 15.17, C.C.P.

MAGISTRATE DUTIES

32 Hour Judge's School
Austin, Texas
Robin A. Ramsay

Who Are Magistrates?

- Art. 2.09 C.C.P.
- Supreme Ct. Judges
- Ct. of Criminal Appeals Justices
- Ct. of Appeals
- District and County Court Judges
- Justices of the Peace
- AND MUNICIPAL COURT JUDGES

Duties of a Magistrate

- "preserve the peace"
- "issue all process intended to aid in preventing and suppressing crime"
- "cause the arrest of offenders by the use of lawful means in order that they may be brought to punishment"

Magistrates, Officers and Peace Officers

- All magistrates are Officers
- All Peace Officers are Officers
- BUT – Not Magistrates are NOT police officers
- Why???
  - –W e represent different branches of government (Art. 2.12 and 3.03)

ARREST & SEARCH WARRANTS

There can be no warrant of without;

"PROBABLE CAUSE"

U.S. Constitutional Protection

- Protection provided by the Fourth Amendment of the United States Constitution:

"the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Texas Constitutional Protections

- Protection provided by Art. I, Sec. 9 of the Texas Constitution:

"The people shall be secure in their persons, houses, papers, and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation."

Probable Cause

- Probable cause exists where:

"the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that " an offense has been or is being committed. " *Woodard v. State, 668 S.W.2d 337*

Probable Cause is:

- Based on the factual and practical considerations of everyday life
- Deals with probabilities
- More than mere suspicion
- Less than evidence necessary for conviction or even a preponderance of evidence
- Must balance protection against unreasonable searches against law enforcement interests

Probable Cause is not:

- Not mere suspicion, a hunch, or a conclusion without supporting information
- Is not evidence sufficient to convince a magistrate "beyond a reasonable doubt"
- Is not limited to personal knowledge
- Cannot be based on "stale" information – must have occurred within a reasonable time prior to the affidavit

What is a Warrant?
Art. 15.01 C.C.P.

- A written order
- From a magistrate
- Directed to a peace officer or some other person
- Commanding the officer
- To take or seize a person
- To be dealt with according to law

What is a Search Warrant?
Art. 18.01(a)

- A written order
- From a magistrate
- Directing a peace officer or some other person
- Commanding the officer
- To seize or search for a item or object
- And bring it before the magistrate

Requirements of Arrest Warrant
Art. 15.02

- The name of the person accused or a sufficient description of the person sought
- A statement that the affiant has reason to believe that an offense has been committed
- The date and place where the offense occurred
- The signature of the magistrate indicating the office in which he is acting in the body of the warrant or connected with his signature

Requirements of Search Warrant
Art.18.01

- Issued in the name of "the State of Texas"
- Must identify the premises to be searched and the property to be seized
- If property identifiable by identifying number, should contain such number
- A command for the officer to search the property
- Contain the date and preferably the time issued by the magistrate

Officer's Return of Warrant
Art. 18.10

- A search warrant must be returned to the issuing magistrate
- With a written return or statement as to how and when the warrant was executed
- Attached to the warrant or on the back or end of the warrant
- Along with an inventory of the items seized
- Within three (3) days of issuance not including date of issuance or date of return

Other Requirements of Search Warrants

- Officer must safeguard property
- Property may not be removed from county without prior written approval
- Only a sheriff or peace officer may execute a search warrant – not a private citizen or security guard
- Any credible person may be affiant on a probable cause affidavit – not just a peace officer

Affidavit for Search Warrant Must:

- Provide full, accurate description of premises to be searched
- A description of the person(s) who are in actual control of the premises to be searched
- A description of the property to be seized
- A statement of the offense that has been committed and that the property is evidence of that offense
- A statement of the probable cause that leads the affiant to believe that the property sought is at that location

Source of Information in Affidavit

- Personal knowledge of affiant
- Identified informant that has been reliable in the past or from a new informant or good citizen where information is provided to support reliability
- Anonymous informant bolstered by officer/affiant surveillance
- Co-defendant in declaration against interest

Magistrate Records

- A magistrate must maintain a record of all proceedings related to search warrants issued by him
- "Certified" record must be filed with the clerk of the Court
- Record must include the original warrant, affidavit, returns and inventory of seized items

What is Subject to a Search Warrant?

Art. 18.02

- Property acquired by theft
- Property designed for or commonly used in a crime
- Arms or munitions kept for insurrection or riot
- Prohibited weapons
- Gambling devices or equipment
- Obscene materials for commercial distribution
- Illegal drugs
- Any property prohibited by law
- Instruments used in the commission of a crime
- Items constituting evidence of a crime (mere evidence)
- A person
- Contraband subject to forfeiture

Mere Evidence Search Warrants

- Art. 18.02(10) provides for the seizure of "mere evidence" of a crime
- However, only an attorney judge of a municipal court of record, county or district judge, appellate or supreme court justice may issue such warrants
- Mere evidence does not include contraband or illegal items

Prevention of Offenses

- Magistrates have a duty to prevent offenses
- Such offenses include threats to harm self, others or attempts to injure another or cause damage to the property of another
- Magistrate may order a peace officer to arrest offender
- May issue Peace Bond (Rare & Antiquated)

Peace Bonds – Art. 7.01

- Antiquated process
- More commonly seen in Justice Courts
- Requires hearing (no right to a jury)
- Amount of bond discretionary with the Court
- Bond conditioned on the accused keeping the peace toward complainant for up to one (1) year
- If bond not posted, accused ordered to jail for 1 year or until bond posted
- Accused may be discharged at hearing if not evidence that offense will be committed

Magistrate's Order for Emergency Protection

- Occurs at the defendant's first appearance before a magistrate (not arraignment)
- Must involve family violence offense or stalking
- May be at the request of victim, state or on the court's own motion
- Victim need not be present
- Peace officer must make effort to notify victim
- Must be served on defendant in open court

Discretionary or Mandatory

- If offense involves class assault or stalking it is discretionary
- If it involves serious bodily injury or use of a weapon, issuance is mandatory
- Order in effect for 31 or 61 days

Prohibited Conduct

- family violence
- stalking (42.072)
- communicating in threatening or harassing fashion
- going near the residence, place of employment or business
- Possessing a firearm unless a peace officer
- Applies to protected person or member of family

Contents of Order

- Order must contain locations and minimum distances
- Mandatory language regarding punishment and enhancement
- Language informing defendant that no other person may give permission to disregard the order
- Copy of order must be delivered to the defendant, the person protected by the order and the chief of police, the sheriff of the county in which the victim lives and the day care or school if applicable

Orders for Further Detention

- Police may detain for additional four hours after posting bond
- With a determination of probable cause by a magistrate that family violence would continue, the magistrate may order that the accused may be held for an additional 24 or 48 hours after posting of bond
- Order by magistrate must be written and must make finding that violence would continue
- If order for hold beyond 24 hours, magistrate must find that accused has been arrested for family violence in last ten years or for any offense involving a weapon

Art. 15.17 "Magistrations"

- Art. 15.16 and 15.17 C.C.P. require that a person arrested by a peace officer take a detained person before any magistrate of the county where the arrest occurred, without unnecessary delay, or if more expeditious, before a magistrate in a bordering county of the county of arrest

Purpose of 15.17 Magistrations

- Three main components:
  - determination of probable cause
  - issuance of statutory warnings
  - setting of bail

Unnecessary Delay

- Once arrested, the accused must be brought before a magistrate "without unnecessary delay" but not later than 48 hours after arrest (Art. 15.17)
- C.C.P. further requires that misdemeanor offenses require release on personal bond if there has not been a finding of probable cause by a magistrate within 24 hours of arrest
- Case law suggests that 24 hours may be the more prudent approach
- 15.17 warnings and finding of probable cause can always occur much sooner than either 24 or 48 hours

A Magistrate Must Inform the Accused:

- The nature of the accusation
- The content of any affidavit filed (or lack thereof)
- The right to retain legal counsel or to request appointment of counsel if the accused is indigent
- The right to remain silent
- The right to have an attorney present during questioning by officers or representatives of the state
- The right to terminate any interview at any time
- The right to an examining trial in felony cases
- That the defendant is not required to make a statement, but that any statement they make can be used against him or her at a later time

15.17 Magistrations are Not:

- 15.17 proceedings are not adversarial
- As they are not adversarial, there is no right to appointed counsel (Green v. State)
- The magistrate is not required to, and probably should not listen to the defendant's side of the story
- The magistrate is not required to admonish the defendant as to the affect on immigration status (State v. Patricia Jimenez)

Indigence and Appointed Counsel

- Since the passage of SB 7 in 2001, the process for appointment of counsel for indigent defendants has been more clearly defined
- The burden is on the magistrate to inquire whether or not the defendant is indigent and whether or not the defendant will be requesting court appointed counsel
- The magistrate must provide the defendant with reasonable assistance in the process necessary for appointment of counsel
- The process may vary by county, but must be an approved and adopted process for the appointment of indigent counsel
- The magistrate must communicate or transmit the defendant's request for appointment of counsel to the appropriate county authority
- The magistrate must communicate this information in a manner that the defendant can understand (translator need not be certified)

Nature of 15.17 Hearings

- A record of 15.17 hearings must be maintained by the magistrate
- 15.17 hearings may be conducted via closed circuit television so long as a record of the hearing is maintained until the date pretrial ends or the 91st day on misdemeanor cases or 120 days on felony cases
- If the defendant is deaf, the accused must be provided with a certified interpreter for the deaf
- If no probable cause is found for arrest, the accused must be released immediately

MAGISTRATE DUTIES

I. INTRODUCTION

Although municipal courts in Texas are not involved in the adjudication of felony-grade offenses, they play an essential role in the overall judicial process. Traditionally, courts of limited jurisdiction, such as municipal courts, have served a critical "gate-keeping" function for the county and district courts of the state. As a magistrate, municipal court judges have a variety of duties and responsibilities including holding an initial appearance of the arrested person, setting bail and conditions for pretrial release, conducting preliminary hearings and issuing arrest and search warrants. This paper presents only a general overview of those tasks. A thorough understanding of the significance of the office of magistrate comes through time and experience.

A. Who are Magistrates?

1. Art. 2.09, C.C.P., provides that "...the judges of the municipal courts of incorporated cities or towns" are magistrates.

2. Art. 2.09, C.C.P., also identifies the following officers as magistrates: the Supreme Court Justices; the judges of the Court of Criminal Appeals; the justices of the Court of Appeals; District Court Judges; Magistrates appointed by District Court Judges; County Judges; County Court at Law Judges; County Criminal Court Judges; Probate Court Judges; Justices of the Peace, and the mayors and recorders of incorporated municipalities.

B. The Duties of a Texas Magistrate

1. There are three express duties of a magistrate under Texas law (Art. 2. 10, C.C.P.). These are to:

a) "preserve the peace within his jurisdiction by use of all lawful means";

b) "issue all process intended to aid in preventing and suppressing crime";

c) "cause the arrest of offenders by the use of lawful means in order that they may be brought to punishment."

C. Magistrates, Officers and Peace Officers

1. All magistrates are officers. All Peace Officers are officers. However, magistrates are not peace officers. They represent different branches of government and their roles are and should remain separate and distinct. (Art. 3.03, 2.12)

2. The term "Peace Officer" is defined in Art. 2.12, C.C.P. The express duties as stated in Art. 2.13 are as follows:

a) to interfere without warrant to prevent or suppress crime in every case authorized by the provisions of this Code;
b) to execute all lawful process issued to the officer by any magistrate or court;
c) to give notice to some magistrate of all offenses committed within the officer's jurisdiction, where the officer has good reason to believe there has been a violation of the penal law; and
d) to arrest offenders without warrant in every case where the officer is authorized by law, in order that they may be taken before the proper magistrate or court and be tried.
e) to execute all lawful process issued to the peace officer by any magistrate.

II. PROBABLE CAUSE - ARREST & SEARCH WARRANTS

The purpose of the search provisions in both state and federal constitutions is to safeguard the privacy and security of individuals against arbitrary invasion by government officials. ***Juarez v. State,*** 758 S.W.2d 772, 775 (Tex.Crim.App. 1988).

The Fourth Amendment to the U.S. Constitution states:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the lace to be searched, and the persons or things to be seized."

Art. I, Section 9 of the Texas Constitution states:

"The people shall be secure in their persons, houses papers, and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation."

A. Probable Cause

1. As a magistrate, you will be called upon to issue warrants for the search and/or seizure of persons, places or things based on an sworn affidavit presented by a law enforcement officer. It is the duty of the magistrate to determine, prior to the issuance of a warrant, whether or not probable cause exists. Without the initial finding of probable cause, the warrant should not be issued.

2. Probable cause exists where "the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed. *Woodward v. State, 668 S.W.2d 337, 345 (Tex.Cr.App. 1982)* citing *Carroll v. United States, 267 U.S. 132, 162, 45 S. Ct. 280, 69 L. Ed. 543.(1925).*

3. The determination of the existence of probable cause concerns 'the factual and practical considerations of everyday life on which reasonable and prudent [people], not

legal technicians, act." *Brinegar v. United States, 338 U.S. 160, 175, 69 S. Ct. 1310, 93 L. Ed 1879* (1949).

4. "Probable cause deals with probabilities; it requires more than mere suspicion but far less evidence than that needed to support a conviction or even that needed to support a finding by a preponderance of the evidence. *United States v. Woolery*, 670 F.2d 513, 515 (5th Cir. 1982).

5. The rule of probable cause seeks to accommodate the sometimes opposing interests of safeguarding citizens from rash and unreasonable police conduct and giving fair leeway to legitimate law enforcement efforts. See generally *Woodward v. State*, 668 S.W.2d at 345-46.

6. Probable cause is NOT a mere suspicion, a hunch, a conclusion without supporting information.

7. When a magistrate has enough credible facts to show that evidence of a crime exists or that evidence of a crime will be found in a particular place, he has probable cause. It is not required that the affiant convince the magistrate "beyond a reasonable doubt" that a crime has occurred.

8. "Four Corners Rule". In determining whether or not probable cause exists, the reviewing magistrate is limited to considering only that information contained within the "four comers" of the affidavit presented by the law enforcement officer. Verbal statements made by the affiant during the reviewing process may not be considered in determining probable cause.

9. When reviewing an affidavit for probable cause, the arresting officer need not have *personal* knowledge of the facts which constitute probable cause. ". . . Probable cause . . . can rest upon the *collective* knowledge of other police, rather than solely on that of the officer who actually makes the arrest." *United States v. Pitt*, 382 F.2d 322 (4th Cir. 1967) (emphasis in original).

10. The information in the affidavit must not be stale. "To support issuance of a search warrant, the affidavit must disclose that the event forming probable cause occurred within a reasonable time prior to the making of the affidavit." *Gonzales v. State, 577 S.W.2d 226, 228 (Tex. Crim. App. 1979)* "Probable cause ceases to exist when *it is no longer reasonable* to presume that items, once located in a specified place are *still* there. Conversely, it *may be reasonable,* under all the circumstances to presume that they are *still* where they once were - even after a considerable lapse of time."[1] *Gonzales v. State, 761 S.W.2d 809,* 813 *(Tex. App.-Austin 1988, pet. ref'd.)*

[1] Factors to be considered in evaluating the reasonableness of the magistrate's decision include: (1) the length of time elapsed; (2) the nature of the property to be seized; (3) the nature of the criminal activity (i.e., is it likely to be continuous or isolated; (4) the likelihood that the property will have been moved. *See Gonzales v. State, 761 S.W.2d 809,* 813 *(Tex. App.-Austin 1988, pet. ref'd.)*

III. SEARCH AND ARREST WARRANTS

A magistrate may issue a search or arrest warrant for any precinct in his or her county, not just the municipality.

A. What is a Warrant?

1. An **arrest warrant** is "a written order from a magistrate, directed to a peace officer or some other person specifically named, commanding him to take the body of the person accused of an offense to be dealt with according to law." Art. 1, Sec. 9, Texas Constitution; Art. 15.01, C.C.P. An arrest warrant must be supported by a sworn affidavit containing substantial facts establishing probable cause in every instance in which an arrest warrant is requested.

2. A **search warrant** is "a written order, issued by a magistrate and directed to a peace officer, commanding him to search for any property or thing and to seize the same and bring it before [the] magistrate or commanding him to search for and photograph a child and deliver to the magistrate any of the film exposed pursuant to the order." Art. 18.01(a).

3. No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. As with arrest warrants, search warrants also must be supported by a sworn affidavit containing probable cause. Art. 18.01(b).

4. The probable cause affidavit becomes public information if it is executed. Art. 18.01(b).

B. Requirements of an Arrest Warrant

An arrest warrant must contain the following and it must be sworn to before an officer authorized to administer an oath:

1. The name of the person accused. If the name of the person is unknown, a reasonably particular description of the person can be used instead. Art 15.02(1)

2. A statement that the accused has committed an offense against the laws of the state, or that the affiant or complainant has reason to believe and does believe that the accused has committed an offense. Art 15.02(2)

3. The time and place of the commission of the offense.

4. The signature of the magistrate indicating the office in which he is acting must be in the body of the warrant or connected with his signature. Art 15.02(3)

C. Requirements of a Search Warrants

1. A search warrant is comprised of three parts: a) the warrant itself; b) the peace officer's return; c) the probable cause affidavit.

a. **Requisite elements of the search warrant:**

1. It runs or is issued in the name of "the State of Texas";

2. It must identify, as near as may be, the premises to be searched and the property to be seized. The warrant itself must contain the full address, including the county, of the premises is be searched. (e.g. "123 Main St., Houston, Harris County, Texas");

3. Warrants for the seizure of property identifiable by serial number should contain the serial number in the warrant. (e.g. "(1) 19 inch color Sony television set bearing serial number 234907.");

4. It commands a peace officer of the appropriate county to forthwith search the mentioned premises;

5. It is dated (day and hour is preferable) and signed by the issuing magistrate.

b. **Peace Officer's Return of the Warrant**: After the execution of the warrant, Art. 18.10 C.C.P. obligates the officer to return the search warrant to the issuing magistrate stating on the back of the search warrant, or on some paper attached to it, whether and/or how it was executed and delivering an inventory of the property taken into his possession under the warrant.

1. The officer is also required to safeguard the property until such time as the issuing magistrate orders disposition of the property. Art. 18.10

2. The warrant must be executed within three (3) days of its issuance or the authority to seize the property expires, exclusive of the date of issuance and the date of return. Art. 18.07 C.C.P.

3. None of the property seized as a result of the warrant may be removed from the county in which it was seized without prior written approval for its removal.

4. Only a sheriff or a peace officer of the county of the premises to be searched can execute a search warrant. A private citizen, investigator, or security guard cannot execute or "run" a warrant.

c. **The Probable Cause Affidavit for the Search Warrant**: Any credible *person can* be the affiant for a search warrant, not just a peace officer. An affidavit for a search warrant must contain five basic points:

1. A full and accurate description of the premises to be searched: In determining whether or not the premises have been adequately described, ask yourself, "If the warrant were given to someone who had never been to the premises in question, would that person be able to go to the right place?"

2. A description of the individual, or individuals who are in control of the premises to be searched: If the name of the person is known, the name should be in the affidavit. If only a nickname or alias is known, that name should be in the affidavit as well. If only a physical description is known, then the affidavit should contain that description. If none of the above information is available, that fact should be in the affidavit.

   **If the affiant does not know who is in control of the premises, a warrant can still issue, as long as the affidavit reflects that the affiant does not know who is in control of the premises.

3. A description of the property to be seized: The affidavit should allege, as specifically as possible, the type of property sought to be recovered.

4. A statement of the offense that has been committed and that the property to be seized is evidence of that offense.

5. A recital of the probable cause that gives the affiant belief that the property is at the location. For any search warrant to issue, the magistrate must find that the information came from someone who is worthy of belief. Generally, probable cause for a search warrant will come from one of four sources:

   i. Facts within the personal knowledge of the Affiant. The officer/affiant is swearing in the affidavit to personal observations he or she has made which will lead the magistrate to the belief that probable cause exists.

   ii. Facts emanating solely from an informant, named or unnamed. Informants who have been *used in the past* can be accepted by the court as credible informants if they have given good and reliable information in the past. *First time informants,* or good citizens, can be the source of information relied upon in a warrant where a narrative is provided to explain why that informant is credible.

   iii. Facts emanating from an anonymous informant, bolstered or corroborated by offlicer/affiant surveillance. If an officer gets a tip from an unknown person, he can establish probable cause by gathering enough additional factual details from the informant and then corroborating it with surveillance or other credible information.

   iv. Facts emanating from the declaration against penal interest made by a co-defendant. A person who admits the commission of a crime will probably not lie about other things. Therefore, a defendant who participates in a crime can be the source of information which is the basis for a search

warrant. He does not have to sign a confession or a notarized statement, only admit to the offense.

2. The magistrate must maintain a record of all proceedings related to search warrants issued by him and ensure that the "certified" record of the proceedings, including the original the warrants, probable cause affidavits, officer's returns and inventories of property seized, is filed with the clerk of the court.

D. What is Subject to a Search Warrant?

The following list of the items are subject to a search warrant pursuant to Article 18.02 of the Code of Criminal Procedure:

1. Property acquired by theft or in any other way making its acquisition a criminal offense.
2. Property specially designed, made, or adapted for or commonly used in the commission of crime.
3. Arms and munitions kept or prepared for the purpose of insurrection or riot.
4. Prohibited weapons.
5. A gambling device or equipment, altered gambling equipment, or gambling paraphernalia;
6. Obscene materials kept or prepared for commercial distribution or exhibition, subject to other rules.
7. Illegally manufactured and/or possessed drugs.
8. Any property the possession of which is prohibited by law.
9. Implements or instruments used in the commission of a crime.
10. Property or items, except the personal writings of the accused, constituting evidence of a crime or constituting evidence tending to show that a particular person committed a crime, otherwise known as "Mere Evidence";

*Article 18.01(c) of the Texas Code of Criminal Procedure authorizes the issuance of a warrant for a search and/or seizure of property constituting evidence of an offense or constituting evidence tending to show that a particular person committed the offense. However, only a judge of a municipal court of record who is a licensed attorney may issue evidentiary warrants pursuant to Art. 18.02(10).[2]

11. A person.
12. Contraband subject to forfeiture under Chapter 59 of the Code of Criminal Procedure. This is also "mere evidence". The only exception to the "mere evidence" rule is 18.02(i).

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[2] (c) A search warrant may not be issued pursuant to Subdivision (10) of Article 18.02 of this code unless the sworn affidavit required by Subsection (b) of this article sets forth sufficient facts to establish probable cause: (1) that a specific offense has been committed, (2) that the specifically described property or items that are to be searched for or seized constitute evidence of that offense or evidence that a particular person committed that offense, and (3) that the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing be searched. Except as provided by Subsections (d) and (i) of this article, only a judge of a municipal court of record or county court who is an .orney licensed by the State of Texas, statutory county court, district court, the Court of Criminal Appeals, or the Supreme Court may issue warrants pursuant to Subdivision (10), Article 18.02 of this code.

IV. PREVENTION OF OFFENSES

A magistrate has a duty, under certain circumstances, to prevent offenses.

A. Threat to Injure Himself or Other

When a magistrate has heard that a threat has been made by a person to do injury to himself or the person or property of another, the magistrate must give immediate notice to a peace officer so that the injury may be prevented. Art. 6.01, C.C.P.

B. Threat to Take Life

When a magistrate personally hears one person threaten to kill another, he must either issue an arrest warrant for that person, or in exigent circumstances, the magistrate may immediately arrest such person. Art. 6.02, C.C.P.

C. Attempt to Injure or Cause Damage

When a magistrate personally hears or sees a person attempt to injure another or cause damage to the property of another, he must either order a peace officer to stop the attempt, or issue a warrant of arrest for such person, or personally arrest the person. Art. 6.03, C.C.P.

1. If the magistrate elects to personally arrest such person, the magistrate may solicit the help of anyone present to accomplish the arrest. Art. 6.03, C.C.P.

2. Once such person is brought before the magistrate, the magistrate may either demand the person post a peace bond or order him jailed. Art. 6.04, C.C.P. (For peace bond proceedings, please refer to Section V below.)

V. PEACE BONDS

TMCEC Editors Note: While magistrates should understand the mechanics of peace bonds, municipal judges should be aware that in recent years peace bonds have become nearly extinct. The reason for this simple, prominent legal scholars believe they are easily abused and debatably deny the accused due process of law. For this reason, magistrates are cautioned against the use of peace bonds. Rather, if eligible magistrates may consider issuing a magistrates order for emergency protection or referring victims to county or district court for a restraining order.

A. Magistrate shall issue warrant

Upon a sworn affidavit that an accused is about to commit, or has threatened to commit an offense against a complainant or complainant's property, the magistrate shall immediately issue a warrant for the arrest of the accused so that he may be brought before the magistrate or before some other named in the warrant.

B. Setting of hearing on merits

The accused is entitled to post an appearance bond. A condition of the appearance bond is that the accused will keep peace toward the complainant during the pendency of the bond.

C. Hearing

1. There is no right to jury trial. Ex Parte Johnson, 391 S.W.2d 407 (Tex.Crim.App. 1965).

2. If the magistrate finds the accused intended to commit an offense or that the threat was seriously made, magistrate shall order the accused to post bond.

3. The amount of bond is discretionary, but the magistrate should take into account the nature of the offense and the defendant's financial status. Art. 7.06, C.C.P.

4. The bond is conditioned on the accused keeping the peace toward complainant and all persons named in the bond for up to one (1) year.

5. The magistrate must warn the accused that violation of any bond condition may result in revocation of the bond and is punishable by forfeiture of the bond and/or contempt. Punishment for contempt in Municipal Court is a fine of up to $100 and/or confinement in jail for up to 3 days. Art. 21.002(c), Government Code.

6. If the accused fails to post the bond, the magistrate shall order him jailed for one (1) year or until he posts the bond. Art. 7.08, C.C.P.

7. The bond may be cash or surety, made payable to the "State of Texas" and for a specific amount. It must be signed by defendant if it is a cash bond and by the defendant and his surety if it is a surety bond. Art. 7.04, C.C.P.

8. If the magistrate believes from the evidence that there is no good reason to believe that the offense was intended or will be committed, or that no serious threat was made by the accused, the magistrate shall discharge the accused, and may, in his discretion, tax the cost of the proceeding against the party making the complaint. Art. 7.10, C.C.P.

VI. MAGISTRATE'S ORDER FOR EMERGENCY PROTECTION

A. Discretionary vs. Mandatory

At a defendant's first appearance before a magistrate after having been arrested for an offense involving family violence or stalking (Art. 42.072, Penal Code), the magistrate may issue an order for emergency protection. This order may be *sua sponte,* or upon the motion of the victim, the victim's guardian, a peace officer, or the attorney representing the State. If the defendant is arrested for an offense involving serious bodily injury or the use or exhibition of a deadly weapon, the magistrate shall issue the emergency protective order. Art. 17.292(b)(1-2).

1. The victim need not be present at hearing. Art. 17.292(d). C.C.P.

2. If the victim is not present at hearing, the magistrate must ensure that a peace officer makes a "good faith effort" to call the victim within 24 hours to notify of the issuance of the order. Art. 17.292(h).

3. The order must be served upon defendant in open court.

4. The order is effect for at least 31 but not more than 61 days after date of issuance. Art. 17.292(j).

B. What the Magistrate May Prohibit

The issuing magistrate may prohibit the defendant from:

1. committing family violence or assault on the person protected under the order;

2. committing an act constituting stalking under Art. 42.072, Penal Code;

3. communicating with a protected person or a family member of the protected person in a threatening or harassing manner;

4. communicating a threat a protected person;

5. going to or near the residence, place of employment, or business of a member of the family or household or of the protected person, or the residence, child care facility, or school where a child protected under the order resides or attends;

6. possessing a firearm, unless the person is a full-time, licensed peace officer employed by a city or other jurisdiction.

C. What the Order Must Contain

The order must describe prohibited locations and minimum distances that offender must maintain, unless the magistrate determines for victim's safety that specific addresses or descriptions of locations should be omitted.

The order must also contain the following language in bold-face type or in capital letters pursuant to Art. 17.292(g):

"A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS $4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE OR A STALKING OFFENSE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS. THE POSSESSION OF A FIREARM BY A PERSON, OTHER THA A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A FULL-TIME PAID EMPLOYEE OF A STATE AGENC OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO THIS ORDER MAY BE PROSECUTED AS A SEPARATE OFFENSE PUNISHABLE BY CONFINEMENT OR IMPRISONMENT.

"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."

The magistrate must send copy of order to:

1. the chief of police in the municipality where the person protected by the order resides; or
2. the sheriff of the county in which the person protected by the order resides, if that person does not reside in a municipality; and
3. the child care facility or school, if applicable.

VII. "FURTHER DETENTION" HOLD

Normally, when an accused posts bond, he must immediately be released from custody. However, he may be held longer if the incident involves family violence.

1. Art. 17.291(b) C.C.P. provides that when a person who is arrested without warrant for an act of family violence posts bond, the police chief or sheriff may retain the accused in custody for an additional 4 hours after the posting of a bond.

2. This period may be extended if a magistrate determines there is probable cause to believe the violence would continue if the person were immediately released. In such a case, the detention period may be extended for an additional period not to exceed 48 hours, but only by written order directed to the person having custody of the detained person issued by a magistrate who concludes that:

a. the violence would continue if the person is released; and

b. if the additional period exceeds 24 hours, probable cause exists to believe that the person committed the instant offense and that, during the 10-year period preceding the date of the instant offense, the person has been arrested:

i. on more than one occasion for an offense involving family violence; or

ii. for any other offense, if a deadly weapon, as defined by Section 1.07, Penal Code, was used or exhibited during commission of the offense or during immediate flight after commission of the offense.

VIII. 15.17 HEARING - "MAGISTRATION" OF ACCUSED ADULTS

It is common for law enforcement and court personnel to refer to the initial proceeding before a magistrate as an "arraignment". However, this is a misnomer. When the arresting officer takes the defendant before a magistrate "without unnecessary delay", the proceeding is more accurately called "magistration." The duties imposed on the magistrate by Art. 15.17 can be broken into three categories: determining probable cause (See Section II.A. above), issuing warnings, and setting bail.

A. To Which Magistrate?

A person who is arrested by a peace officer may take the detained person to any magistrate of the county where the arrest was made or if more expeditious, to a magistrate in a county bordering the county in which arrest was made. (15.16, 15.17, C.C.P.)

B. Magistrate Must Inform Accused.

1. Once the accused is arrested, Art. 15.17 requires that he be taken before a magistrate "without unnecessary delay, but **not later than 48 hours** after the person is arrested".... During this initial hearing, the magistrate must inform the accused of the following:

a. the nature of the accusation;

b. the content of any affidavit filed in support of his arrest;

c. the right to retain counsel or to request appointment of attorney if indigent and cannot afford counsel.

d. the right to remain silent;

e. the right to have his attorney present during any interview with peace officers or attorneys representing the State;

f. the right to terminate any interview at any time;

g. the right to an examining trial if it is a felony-grade offense;

h. That accused is not required to make a statement, but any statement made by accused can be used against him or her.

2. Art. 15.17 does not allow for an adversarial proceeding like a trial or an examining trial. Since the hearing is not adversarial, generally no right to appointed counsel attaches at this stage of proceedings. *Green v. State*, 872 S.W.2d 717 (Tex. Crim. App. 1994). The magistrate is not required to, nor probably should, listen to the defendant's side of the story.

3. Article 15.17 C.C.P. does not require the magistrate to admonish the accused regarding the effect of criminal proceedings on immigration status. Further, in light of *State v. Patricia Jimenez, aka Ana Maria Martinez,* 987 S.W.2d 886 (Tex. Crim. App. 1999), no admonishment is required.[3] However, given the proximity to Mexico and the prevalence of immigrants in Texas, the magistrate may want to consider warning the accused of the fact that a later plea of "no contest" or "guilty", or finding of guilt at the trial stage may result in his deportation, denial of citizenship or naturalization, or exclusion from admission to this country

C. The Vienna Convention

The Vienna Convention on Consular Relations of 1963 was created to formalize consular relations among the nations signing the treaty in order to ensure that foreign nationals traveling abroad are extended appropriate consular services. The United States became a signatory to the treaty in 1969, but not until the late 1990's did the treaty's implications on criminal proceedings impact law enforcement officials and/or prosecutors. Since that time, there have been increased challenges to the arrests and convictions of foreign nationals claiming a violation of the Vienna Convention.[4]

In January 2000 the Texas Attorney General published the *Magistrate's Guide to Consular Notification Under the Vienna Convention.*[5] Four months later, the Texas Court of Criminal Appeals in *Rocha v. State*, 16 SW.3d 1 (Tex. Crim. App. 2000) considered whether failure to warn a foreign national of his or her right to contact consul triggered Texas' exclusionary rule (article 38.23, C.C.P.). Collectively, these two developments have shed some light on the Convention and the role it plays in Texas jurisprudence.

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[3] "Generally, a guilty plea is considered voluntary if the defendant was made fully aware of the direct consequences. It will not be rendered involuntary by lack of knowledge as to some collateral consequence. That a guilty plea may result in deportation is generally considered a collateral consequence. The Legislature chose to require by statute that trial courts admonish persons pleading guilty to a felony after June 13, 1985, that their plea might result in deportation. (*See* TEX. CODE CRIM. PROC. art. 26.13(a)(4)). However, the Legislature chose not to require admonishments for persons charged with misdemeanors, and this Court has never held that such an admonishment is constitutionally required. In view of the recent changes in immigration law, the better practice may be to admonish all defendants as to possible immigration consequences, but we cannot say that such admonition is constitutionally required. Cf. *Carranza v. State*, 980 S.W.2d 653, 656 (Tex. Crim. App. 1998) (failure of trial court to admonish defendant pleading guilty to a felony of his deportation status, as required by statute, was non-constitutional error).

[4] 1 "The Vienna Convention: A New Tool for Representing the Foreigner in the Criminal Justice System," TCDLA Voice for the Defense, November 1996.

[5] A copy of this publication can be obtained free of charge by downloading it from the Texas Attorney General web site under "News & Publications".

1. **Article 36 of the Convention**. The relevant provisions of the Vienna Convention Treaty are found in Article 36 which provides, in part:

> 1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State: . . .
>
> > (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the said person concerned without delay of his rights under this subparagraph.

2. **Exclusionary Rule**. Texas' statutory exclusionary rule, Article 38.23 of the Code of Criminal Procedure provides in relevant part:

> "No evidence obtained by an officer or other person in violation of any provisions of the Constitution or law of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case (emphasis added).

3. **Exclusionary Rule Not Implicated**. With these two provisions in mind, the Texas Court of Criminal Appeals held that treaties are not "laws of the United States of America" within the meaning of Article 38.23 and consequently, the Vienna Convention does not invoke the provisions of the Texas statutory exclusionary rule.

4. **No Other Rights Created**. Based on other federal trial court cases, it is unlikely the U.S. Supreme Court will decide that the Vienna Convention creates individual rights that are enforceable by suppression of evidence in criminal cases under the federal exclusionary rule. Two federal appellate courts have recently examined this issue in great detail.[6] These Courts conducted an exhaustive review of the text of various documents, including the Convention, the U.S. Department of State's interpretation of the Convention, the Senate Committee on Foreign Relations' hearings on the Convention, and the Convention's historical application. The conclusion was that the Convention "creates" no individual rights enforceable in criminal cases.

5. **Competent Officials**. The Convention obligates "competent authorities of the receiving State" to inform the detained foreign national of his rights under the treaty. While the Convention does not define the phrase "competent authorities," some court decisions have assumed, without much analysis, that the competent authorities are local law enforcement officials.[7] This point is unresolved. Nevertheless, the *Magistrate's Guide to the Vienna Convention of Consular Notification*, the Texas Attorney General clearly considers Texas

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[6] See *United States v. Lombera-Camorlinga*, 206 F.3d 882 (9th Cir., en banc, 2000); *United States v. Li*, 206 F.3d 56 (1st Cir., en banc, 2000).

[7] *See United States v. Abdul-Wahaly Ore-Irawo*, 78 F. Supp. 2d 610, 612 (E.D. Mich. 1999); *United States v. Lombera-Camorlinga*, 206 F.3d 882 (9th Cir., en banc, 2000);

magistrates to be "competent authorities of the receiving State." As a result, Texas Attorney General encourages magistrates to assume the responsibility of complying with Article 36 of the Vienna Convention.

D. Nature of 15.17 Hearing

1. In the event the 15.17 hearing is conducted via closed circuit television, a recording must be made.

   a. The recording must be saved until earlier of following dates:
      (i) the date on which pretrial ends; or
      (ii) 91st day after date of arraignment hearing in misdemeanor or 120th day in felony.
   b. Counsel of the defendant, upon payment has right to obtain copy of recording.

2. If the accused is deaf, he or she has right to sign language interpreter and, pursuant to the Americans with Disabilities Act (ADA), that interpreter must be qualified consistent with Art. 38.31, C.C.P., and certified at a Level III, IV or V Certificate issued by the Board for the Evaluation of Interpreters.

3. If no probable cause is found for arrest or further detention, the magistrate must release the accused immediately.

E. Form of Magistrate's Warning

See the "Magistrate's Commitment Form" included as an exhibit to the article by Clay Abbott entitled, *"Magistration Under Article 15.17, C.C.P."* found in the August 2000 Newsletter published by the Texas Municipal Courts Education Center.

IX. "MAGISTRATION" OF ACCUSED JUVENILES

A. What Magistrates Must Warn the Juvenile:

When a child is taken into custody as a result of a law enforcement contact, any statement the child makes may not be used as evidence against him unless specific procedures are carefully followed. The obvious purpose for these procedures is to safeguard the child from coercion, duress and undue influence of police officers. As the "gatekeeper," it is the duty and obligation of the magistrate to jealously enforce these rights.

1. A statement of a child may be used in trial against the child if the statement is made in writing consistent with 51.095(a)(1)(d) of the Texas Family Code and, prior to the making of the statement, a magistrate advised that:

   a. The child may remain silent and not make any statement.
   b. Any statement the child makes may be used in evidence in any future proceeding.
   c. The child has a right to have an attorney present to advise the child either prior to or during any questioning.

d. If the child is unable to employ an attorney, the child has a right to have an attorney appointed to counsel with the child before or during any interviews with peace officers or attorney representing the State.
e. The child has a right to terminate the interview at any time.

2. The magistrate should also inform the juvenile the charge for which he or she is being held.

3. The child must knowingly, intelligently and voluntarily waive the above rights before and during the making of any statement and the child must sign the statement in the presence of the magistrate. 51.095(a)(1)(c) Tex. Fam. Code. The following are suggested areas of inquiry to determine the child's level of understanding and his ability to knowingly and voluntarily waive his or her constitutional rights[8].

a. What was the last grade of school completed?
b. Does the child read, write and understand the English language?
c. What kind of grades is (was) the child making in school?
d. Does the child understand what a trial involves?
e. Has the child taken any drug or medication within the past 24 hours?
f. Has the child ever been treated by a psychiatrist?
g. Has the child been mistreated by law enforcement personnel?
h. Has the child been promised anything by law enforcement personnel or anyone else in exchange for his or her statement?
i. When was the last time the child had sleep?
j. When was the last time the child had anything to eat or drink?
k. Is the child a U.S. citizen?
l. If the parent or guardian is not present, inquire as to the last time the child saw or spoke to such person.

4. In order for a child to knowingly, intelligently and voluntarily waive his or her constitutional rights, it is a good practice to generally warn the child as to the judicial process involved in a juvenile case.

a. First, again inform the child of the charge for which he is being held.
b. That the State of Texas may bring formal charges against the juvenile in the way of a petition filed (with the district court having jurisdiction over juveniles) alleging the commission of delinquent conduct. (Art. 53.04, Texas Family Code) The potential punishment is confinement in the Texas Youth Commission until the child's 21st birthday. (Art. 61-084(c), Human Resources Code)
c. That the district attorney may refer that petition to the grand jury if the child has twice before been found to have committed felony offenses (Art. 53.045, Art. 51.031, Texas Family Code), or, if the violation consists of:

(i) murder;
(ii) capital murder;
(iii) aggravated kidnapping;

[8] The TMCEC has prepared useful forms dealing with the statement of a juvenile defendant which can be found in the "Juveniles" section of the 2002 Forms Book.

(iv) sexual assault or aggravated sexual assault;
(v) aggravated assault;
(vi) aggravated robbery;
(viii) injury to a child, elderly individual, or disabled individual;
(ix) deadly conduct involving the discharging of a firearm;
(ix) certain types of cases involving possession, delivery, or manufacture of controlled substances;
(xi) criminal solicitation;
(xii) indecency with a child;
(xiii) criminal solicitation of a minor;
(xiv) criminal attempt involving murder, capital murder, with a child, aggravated kidnapping, aggravated sexual assault, or aggravated robbery; or
(xv) arson.

d. That if the grand jury hands approves the petition, the case will be sent to the juvenile court for prosecution; if the charge is found to be true, the potential punishment is confinement in the Texas Youth Commission until the child turns 18 and then transfer to the Texas Department of Criminal Justice Institutional Division for: (i) up to 40 years for a capital felony, first degree felony, or an aggravated controlled substance felony; (ii) up to 20 years for a second degree felony; and (iii) up to 10 years for a third degree felony. (Art. 54.04, Texas Family Code).

e. That the juvenile court may waive its jurisdiction and transfer the child's case to the criminal district court for prosecution as an adult if the following conditions exist:
(i) the alleged offense is a felony;
(ii) if the child was 14 years of age at the time of an alleged capital felony, aggravated substance felony or first degree felony, or if the child was 15 years of age at the time of an alleged second, third, or state jail felony.

f. That if the child is tried as an adult upon indictment by the grand jury and is ultimately found guilty, the maximum punishment is as follows (Art. 12.31 et seq. Texas Penal Code):
(i) for capital murder, life imprisonment. (Arts. 12.31 and 8.07, Penal Code)
(ii) for first degree felony, up to life or 99 years imprisonment and $10,000 fine.
(iii) for second degree felony, up to 20 years imprisonment and $10,000 fine.
(iv) for third degree felony, up to 10 years imprisonment and $10,000 fine.
(v) for state jail felony, up to 2 years confinement in state jail and $10,000 fine.

B. Magistrate Makes Independent Inquiry

The inquiry into the voluntariness of the statement requires that the child be interviewed by the magistrate outside the presence of law enforcement or prosecuting attorney, unless there is a danger of physical harm to the magistrate by the child. (51.095(a)(1)(d) Tex. Fam. Code)

C. Written Statement

If child decides to give written statement to police, prior to signing the statement, he or she should be brought back to the magistrate again, with no law enforcement officer or prosecuting attorney present.

1. The magistrate must be fully convinced that the child understands the nature and contents of the statement and that the child is signing the statement voluntarily. To determine same, the following is suggested:

a. Read the written statement out loud;
b. When finished, ask the child if he or she wrote this statement;
c. Ask the child if he or she wants to make any changes to his statement;
d. Ask the child if anyone has threatened him or her to make this statement;
e. Ask if anyone has promised anything to the child to make this statement.

2. The child should then sign the statement in the presence of the magistrate.

3. If all of above is properly done, the written statement is admissible in evidence "in any future proceeding concerning the matter about which the statement was given..." (Art. 51.095(a), Tex. Fam. Code)

D. Remote Video and Bond Conditions

1. Article 15.17, C.C.P provides that the appearance before the magistrate of a defendant be "in person" or broadcast through "closed circuit television." The relevant language reads:

> (a) . . .
>
> A closed circuit television system may not be used under this subsection unless the system provides for a two-way communication of image and sound between the arrested person and the magistrate. A recording of the communication between the arrested person and the magistrate shall be made. The recording shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on which the recording is made if the person is charged with a misdemeanor or the 120th day after the date on which the recording is made if the person is charged with a felony. The counsel for the defendant may obtain a copy of the recording on payment of a reasonable amount to cover costs of reproduction.

2. Recording the 15.17 hearings is only necessary if the remote video system is used.

X. EXAMINING HEARINGS

A. 16.01 Hearings

1. The accused in any felony case has a right, prior to indictment, to an examining hearing before any magistrate of the county having jurisdiction over the offense. Note that municipal court judges have no jurisdiction to conduct examining hearings in capital offenses.

2. There is no federal constitutional right to a preliminary hearing. *Harris v. Estelle*, 487 F.2d, 1293 (5th Cir. 1974). Thus, a grand jury indictment terminates any right to an examining trial.

3. The accused has no right to examining hearing in misdemeanor case.

B. Purpose of Hearing

1. The traditional and statutory purposes of an examining trial are to determine whether there exists sufficient evidence of guilt to hold a suspect accused of criminal conduct, whether bail should be allowed and if so, the amount of bail. The hearing is also used to perpetuate the testimony of witnesses, including any voluntary statement the suspect may wish to make. [9]

2. Although a suspect's right to an examining trial is termed "absolute", it is clear that this right is not unrestricted but is in fact terminated by the return of an indictment.[10]

C. Nature of Examining Hearing

1. Before testimony commences, the magistrate must inform accused of his or her right to make a voluntary statement, but that he or she cannot be compelled to make such statement; the magistrate must also warn accused that such statement may be used in evidence against him or her.

2. Art. 16.04 requires that any voluntary statement made by the accused be reduced to writing, signed (but not sworn to) by the accused and attested to by the magistrate.

3. If accused wants to make a statement, it must be done before the examination of witnesses.

4. The magistrate has the power in all cases, where a witness resides or is in the county where the prosecution is pending, to issue an attachment for the purpose of enforcing the attendance of such witness. (*See* Art. 16.10 and Art. 24.01, C.C.P.)

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[9] See *State ex rel. Holmes v. Salinas*, 784 S.W.2d 421 (Tex.Crim.App. 1990) citing with approval *Harris v. State*, 457 S.W.2d 903 ex.Cr.App. 1970);

[10] *Brown v. State, 475 S.W.2d 938 (Tex.Cr.App. 1972).*

5. Counsel for the State and the Defendant may examine witnesses.

a. The accused has the right to be present during the testimony.
b. Texas Rules of Evidence apply. (*See* Art. 16.07, C.C.P. and T.R.E. 101(b))
c. Testimony of witnesses must be reduced to writing and signed by the witness and certified to by the magistrate.

D. Magistrate's Order

1. The magistrate must make an order following the hearing either discharging the accused or committing him or her to jail and setting bond.

2. The burden of proof is on the State to produce evidence showing probable grounds to believe the accused is guilty of the offense charged.

3. Failure to rule one way or the other within 48 hours is equivalent to a finding of no probable cause. (*See* Art 16.17, C.C.P.)

XI. MENTAL ILLNESS WARRANTS

A. Grounds for Issuance

1. Chapter 573.012 of the Texas Health & Safety Code authorizes a magistrate, upon application for emergency detention, to issue a warrant if he or she finds reasonable cause to believe that:

a. the person evidences mental illness;
b. the person evidences a substantial risk of serious harm to himself or others;
c. the risk of harm is imminent unless the person is immediately restrained; and
d. the necessary restraint cannot be accomplished without emergency detention.

2. Factors to consider with regard to the element of "substantial risk of serious harm to the person or others" are as follows:

a. The person's behavior; and
b. Evidence of severe emotional distress and deterioration in mental condition to extent that person cannot remain at large.

3. If each element alleged in the application is satisfied, the magistrate must issue a warrant to a peace officer for the person's immediate apprehension. 573.012(d).

B. Application for Warrant for Emergency Detention (Chap. 573.011)

1. The application for emergency detention of a person must be in writing, filed by an adult, and state the following:

a. Applicant's must give his relationship to the subject person;
b. Applicant has reason to believe and does believe a person evidences mental illness;
c. Applicant has reason to believe and does believe the person evidences a substantial risk of serious harm to himself or others;
d. A specific description of the risk of harm;
e. Applicant has reason to believe and does believe the risk of harm is imminent unless the person is immediately restrained; and
f. Applicant gives detailed description of the person's specific recent behavior, overt acts, attempts, or threats evidencing the imminent risk of harm unless the person is immediately restrained.

C. Detention of Subject Person

1. A mental health facility accepting the subject person pursuant to the warrant may hold the person in custody for no longer than 24 hours after the time the person is admitted, unless a written order for protective custody is entered. (§573.021)

a. Before the order for protective custody can be signed, the district attorney must file a sworn application for court-ordered mental health services and a motion for order of protective custody pending the trial - on the application.

2. The subject person can be admitted pursuant to the magistrate's warrant only if a physician first makes a written statement that:

a. the person is acceptable to the facility;
b. upon examination, the person is mentally ill;
c. the person evidences a substantial risk of serious harm to himself or others;
d. the risk of harm is imminent unless the person is immediately restrained;
e. emergency detention is the least restrictive means to accomplish the necessary restraint. The physician must also state the nature of the mental illness, a specific description of the harm the person evidences, and detailed basis forming the physician's opinion.

D. Examination/Transfer of Mentally Ill or Retarded Defendant

1. Art. 16.22(a), C.C.P., requires a magistrate to order the examination of a defendant held in the sheriff's custody if there is reasonable cause to believe the defendant suffers from mental retardation of mental illness. The exam may be done by a disinterested mental health expert qualified to perform such exams.

2. If the defendant fails or refuses to submit to the examination, the magistrate may order the defendant to custody for examination for a reasonable period not to exceed 21 days.[11]

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[11] This section was amended during the 77th Legislative session to order the defendant "to submit to examination in a mental health facility determined to be appropriate by the local mental health or mental retardation authority and with the consent of the head of the facility."

3. The mental health expert must submit a report of the examination within 30 days of the order and the magistrate must provide copies of the report to both prosecuting and defense counsel. 16.22(b). Among other matters, the report must state whether the defendant is "competent to stand trial."[12]

[12] This additional requirement is also a recent change imposed by the 77th Legislature. Art. 16.22(b)

FAILURE TO APPEAR AND WARRANTS

I. Failure to Appear

A. Violation of Promise to Appear (VPTA)

A person who willfully violates a written promise to appear in court commits a misdemeanor regardless of the disposition of the charge on which the person was arrested. (Section 543.009, T.C.)

B. Failure to Appear (FTA)

When a defendant lawfully released from custody with or without bail, intentionally and knowingly fails to appear in accordance with the terms of the release, the defendant can be charged with the offense of failure to appear. (Section 38.10, P.C.)

C. Peace Officer's Authority to Issue Citations

Peace officers authority to release a defendant on a written promise to appear for traffic offenses under Subtitle C, T.C. is found in Section 543.003, T.C. (does not include registration offenses, drivers' license offenses, or failure to maintain financial responsibility offenses).

A peace officer's general authority to release defendants by issuing a citation is found in Article 14.06(b), C.C.P. The authority to issue citations under Article14.06(b) makes an exception of the offense of public intoxication.

C. How Charged

Both failure to appear and violation of promise to appear are charged by a sworn complaint filed in court. The prosecutor makes the decision to charge a defendant.

E. When Failure to Appear or Violation of Promise to Appear May Be Filed

Fine-Only Offenses	Failure to Appear Section 38.10, P.C.[1]	Violation of Promise to Appear Section 543.009, T.C.[2]
Registration Law, Subtitle A, Chapter 502, T.C.	Yes	No
Driver's License Law Subtitle B, Chapter 521, T.C.	Yes	No
Commercial Driver's Law Subtitle B, Chapter 522, T.C.	Yes	No

When Failure to Appear or Violation of Promise to Appear May be Filed (continued)

Fine-Only Offenses	Failure to Appear Section 38.10, P.C.[1]	Violation of Promise to Appear Section 543.009, T.C.[2]
Rules of the Road, Subtitle C, T.C.	Yes	Yes (more specific charge)
Financial Responsibility Law, Subtitle D, Chapter 601, T.C.	Yes	No
Vehicle Size and Weight Subtitle E, T.C.	Yes	No
Commercial Motor Vehicles Subtitle F, T.C.	Yes	No
Motorcycles and all-Terrain Vehicles Subtitle G, T.C.	Yes	No
Parking, Towing, and Storage of Vehicles Subtitle H, T.C.	Yes	No
Enforcement of Traffic Laws Subtitle I, T.C.	Yes	No
Miscellaneous Provisions Subtitle J, T.C.	Yes	No
Alcoholic Beverage Code	Yes	No
Education Code	Yes	No
Health and Safety Code	Yes	No
Penal Code	Yes	No
City Ordinances	Yes	No

[1] Before failure to appear, may be filed, the defendant must have been in custody, released with or without bail and failed to appear in accordance with the terms of his or her release.

[2] Defendant must have signed citation for the Subtitle C, T.C. offense and failed to appear before this charge may be filed. If for some reason the defendant did not sign the promise to appear on the citation, violation of promise to appear may not be filed.

E. Failure to Appear vs. Violation of Promise to Appear

Differences	Failure to Appear	Violation of Promise to Appear
Decision to file charge	City prosecutor	City prosecutor
Charge initiated by sworn complaint	Yes	Yes
Culpable Mental State	Intentionally and knowingly	Willfully
Custody of defendant required	Yes	No
Defendant released on bail required	No	No

Failure to Appear vs. Violation of Promise to Appear (continued)

Differences	Failure to Appear	Violation of Promise to Appear
Maximum possible fine if convicted	$500.00	$200.00
Base court costs[1]	$40.00	$43.00
Process issued to bring defendant before court	Warrant of arrest or capias	Warrant of arrest or capias

[1] Does not include Building Security Fee or Technology Fee

FILL IN THE BLANK.

When a defendant is charged with speeding fails to appear, with what offense may the prosecutor charge the defendant?

_____

When a defendant who is charged with speeding and running a stop sign fails to appear, what may the prosecutor charge the defendant with if both charges are listed on the same citation?

_____

When a defendant who is charged with speeding and failure to maintain financial responsibility fails to appear, what may the prosecutor charge the defendant with if both charges are listed on the same citation?

_____

When a defendant charged by citation with the offense of disorderly conduct fails to appear, with what offense may the prosecutor charge the defendant?

_____

When a defendant served with a summons for violating a city ordinance regarding tall grass and weeds fails to appear, with what offense may the prosecutor charge the defendant?

_____

When a defendant charged with the offense of no Texas registration fails to appear, with what offense may the prosecutor charge the defendant?

_____

II. Probable Cause

- No warrant shall issued but upon probable cause. (U.S. Constitution, Amendment IV; Texas Constitution, Article I, Section 9; and Article 1.06, C.C.P.)

- Probable cause is the amount of evidence necessary to cause a person to believe someone has committed a crime.
  - A probable cause affidavit is a sworn statement that presents evidence that a person believes is sufficient probable cause for a judge to issue a warrant for the arrest a person.
- Only magistrates and judges may determine if there is sufficient probable cause to issue a warrant. (Municipal judges are magistrates. Article 2.09, C.C.P.)
- A complaint by itself is not probable cause unless it contains additional information regarding probable cause.
- If a citation is filed with the court and the defendant fails to appear, a sworn complaint based on probable cause or a probable cause affidavit must be filed with the court before the court may issue a warrant.
- After a search warrant has been executed, the clerk is required to make a copy of the probable cause affidavit and make it available for public inspection.

FILL IN THE BLANK.

Probable cause is

_____

Before a judge may issue a warrant the judge must

_____

_____

Only _____ or _____ may determine probable cause.

V. Service of Process

- Processes are written orders issued by a judge or a magistrate.
- City police officers and marshals serve municipal court processes.
  - City officers have authority to serve process within the county or counties in which the city is located.
- Officer executing a warrant must take person arrested before a magistrate without unnecessary delay but no later than 48 hours.
- If a peace officer arrests a person on an out-of-county arrest warrant that is for a fine-only offense, the magistrate in the county of arrest may take the plea, set and collect the fine, and grant jail credit. The magistrate must transmit the written plea, any orders entered in the case, and any fine or costs collected in the case to the court having jurisdiction over the offense

before the 11th business day after the date a magistrate accepts a written plea of guilty or nolo contendere.

FILL IN THE BLANK.

City officers' authority to serve process is _____

_____

A magistrate in a county where a defendant has been arrested on an out-of-county warrant for a fine-only offense may _____

_____

_____

IV. Warrant of Arrest, Capias, Summons, and Capias Pro Fine

- A warrant of arrest is a written order issued by a judge or magistrate ordering the arrest of an accused to be dealt with according to law. Municipal judges are magistrates. Article 2.09, C.C.P. Magistrates have countywide authority. [*Gilbert v. State,* 493 S.W. 2d 783 (Tex. Crim. App. 1973)] A warrant issued by a mayor acting as a magistrate or judge must be countersigned by a judge of a court of record or a magistrate in the county where the warrant is being served if it is served out of the county of issuance.)
- A capias is a written order issued by a judge to arrest a person and bring the person before the court. A capias is required to be issued when a bond forfeiture is declared.
- A summons is a written order issued by a judge or magistrate and gives notice to a person, association, or a corporation that a charge has been filed in court. It provides the address of the court and a date and time requiring the defendant to appear. If a judge is issuing a summons for a case filed in his or her court, the court must have a request for issuance from the prosecutor. A summons must contain wording in English and Spanish that *"[I]t is an offense for a person to intentionally influence or coerce a witness to testify falsely or to elude legal process. It is also a felony offense to harm or threaten to harm a witness or prospective witness in retaliation for or on account of the service of the person as a witness or to prevent or delay a person's service as a witness to a crime."*
- A capias pro fine is a written order issued by a judge when a judgment has been rendered and the defendant fails to satisfy the judgment. It must state the amount of the judgment and sentence and command the appropriate peace officer to bring the defendant before the court or place the defendant in jail until the defendant can be brought before the court. Before a defendant can be committed to jail for default of fine, the judge must determine if the defendant intentionally failed to make a good faith effort to discharge the judgment or the defendant is not indigent.

	Warrant of Arrest	Capias	Summons	Capias Pro fine
Documents on file with court before court may issue	A sworn complaint based on probable cause or a probable cause affidavit. (A complaint by itself is not sufficient unless it contains probable cause).	A sworn complaint based on probable cause or a probable cause affidavit. (A complaint by itself is not sufficient unless it contains probable cause).	A sworn complaint based on probable cause or a probable cause affidavit. (A complaint by itself is not sufficient unless it contains probable cause).	Either a citation or a sworn complaint was filed to initiate charges and a signed judgment by the judge.
Authority to Issue for fine-only offenses filed in municipal court	Judge or Magistrate	Judge	Judge or a magistrate	Judge
Authority to issue for Class A or B misdemeanors, or felonies	Magistrate or judge with authority to hear the case.	Only issued by court with authority to hear the case.	Magistrate or judge with authority to hear the case.	Not applicable.
Notice to corporation or association	No	No	Notified by issuing a summons.	Not applicable.
Request from prosecutor required before issuance	No	No	If judge issuing, request required. If magistrate issuing, no request required.	No
Warrant issued by a mayor magistrate	Required to be countersigned by a court of record judge or a magistrate in the county of service.	Magistrates do not have authority to issue a capias. Only issued by court with authority to hear the case.	No requirement to have summons countersigned.	Magistrates do not have authority to issue capias pro fine.
Authority to serve	Peace officer	Peace officer	Peace officer	Peace officer
Service	Warrant executed by arresting person named in warrant.	Capias executed by arresting person named in capias.	•Service on person named in summons. •Service on corporation is on president, vice president or on Secretary of State, Assistant Secretary, or on clerk in corporation department.	Capias pro fine executed by arresting person named in capias pro fine.

	Warrant of Arrest	Capias	Summons	Capias Pro fine
Enforcement	In-house collection procedures; Contract with DPS for FTA program; warrant collection agency; etc.	In-house collection procedures; Contract with DPS for FTA program; warrant collection agency; etc.	•Issuance of a capias for person's arrest; •If counsel for corporation or association does not appear, court shall enter a not guilty plea and proceed to trial, judgment, and sentencing.	In-house collection procedures; Contract with DPS for FTA program; warrant collection agency; etc.
Method of Service	Arrest of the accused	Arrest of the accused	**Service of a summons on a person** • Deliver a copy to defendant personally; • Leave it at the defendant's place of abode with someone of suitable age and discretion, or • Mail it to the defendant last known address. **Service of a summons on a corporation** • Personally deliver a copy to the corporation's registered agent for service. • If no registered agent or if officer cannot locate registered agent, the officer shall personally serve the president or a vice president of the corporation. • If personal service on the corporation is not effected, then the officer shall serve it on the Texas Secretary of State by delivering a copy personally to the Secretary or the Assistant Secretary of State or to any clerk in charge of the corporation department of the Secretary of State's office. **Service of a summons on an association** • Deliver a copy to a high managerial agent at the place of business. • If unable to serve a high managerial agent, service can be on any member of the association.	Arrest of the defendant

FILL IN THE BLANK.

A warrant of arrest may be issued by _____
and _____.

What is the difference between a warrant of arrest and a capias?

_____
_____
_____

What is a summons? _____
_____

Who may serve a summons? _____

What is the difference between a capias and a capias pro fine?

_____
_____

VI. Warrant Fees

A. Arrest Fee

Courts must collect a five dollar arrest fee when a peace officer issues a written notice to appear in court (citation) for a violation of a traffic law, municipal ordinance, or penal law of this state or makes a warrantless arrest and the person is convicted. A peace officer's authority to issue a citation is found in two statutes:

- Section 543.003, T.C. provides authority for peace officers to issue a written notice to appear for offenses charged under Subtitle C, T.C.
- Article 14.06(b), C.C.P. says that a peace officer may issue a citation for any Class C misdemeanor, except for the offense of public intoxication.

If a city officer issues the citation or makes the warrantless arrest, the city keeps the five dollars. If a peace officer with statewide authority, such as a Department of Public Safety trooper, the city must sent one dollar of the five dollars to the state.

B. Warrant Fee

Warrant fees are costs collected as a result of services performed by a peace officer. A $50 warrant fee must be collected upon conviction if a warrant or capias is processed or executed by a peace officer. The law does not define processing. Some processing by a peace officer that the judge might consider includes the following:

- telephone calls to the defendant;
- courtesy letters to the defendant;

- physically going to look for the defendant; or
- entering the warrant into the local police department computer.

Who retains the fee depends on who executes the warrant or capias.

- If a local peace officer serves or processes the warrant, the city retains the $50 fee.
- If another agency other than the one whose court issued the warrant or capias executes it, that law enforcement agency may request the $50 fee. If the request is made within 15 days of the arrest and the defendant is convicted, the warrant fee must be paid to that agency. If that agency fails to request the fee, the fee is still required to be collected, but it goes into the city treasury of the city whose court issued the warrant or capias.
- If a peace office with statewide authority, such as a Department of Public Safety trooper, the city must pay $10 of the $50 to the state.

C. Special Expense Fee

Cities may by ordinance adopt a special expense fee not to exceed $25 for issuance and service of a warrant of arrest for the offenses of failure to appear and violation of promise to appear after due notice.

D. Fee for Service of a Summons

If a defendant is served with a summons and then later convicted, the defendant must pay a fee of $35. This fee is deposited into the city treasury.

E. Chart of Fees

	Arrest Fee	Warrant Fee	Special Expense Fee	Summons Fee
When charged	Peace officer issued a citation or made a warrantless arrest and there is a conviction.	Peace officer processed warrant or executed warrant and there is a conviction.	Peace officer executes warrant for failure to appear or violation of promise to appear. Collected upon conviction.	When a peace officer serves a summons and the defendant is convicted.
How much	$5.00	$50.00	Not to exceed $25.00	$35.00

	Arrest Fee	Warrant Fee	Special Expense Fee	Summons Fee
If peace officer with law enforcement agency other than agency whose court issued warrant executes or serves warrant	Fee stays with city where case is filed.	If other law enforcement agency requests within 15 days of arrest and the defendant is convicted, the warrant fee goes to the other law enforcement agency. If other agency fails to request, fee stays with city whose court issued warrant.	Fee stays with city where case is filed.	Fee stays with city where case is filed.
How much is sent to state	If local peace officer issued citation or made warrantless arrest, fee stays with city. If an officer with statewide authority issued citation or made warrantless arrest, $1.00 goes to state.	If local peace officer processes the warrant or executes the warrant, $50 kept by city. If a peace officer with statewide authority executes warrant, $10 sent to state.	City retains.	City retains.

FILL IN THE BLANK

A defendant is convicted of the offense of disorderly conduct after a local peace officer issued a citation to the defendant. Is the arrest fee assessed?

_____

A defendant is convicted of the offense of failure to appear. Is the arrest fee assessed?

_____

A defendant is charged with tall grass and weeds by the code enforcement officer who is not a peace officer. Is the arrest fee assessed?

_____

A peace officer arrests a defendant for no driver's license and failure to maintain financial responsibility. Is the arrest fee assessed?

_____

A defendant is convicted of assault after being arrested on a warrant. Is the warrant fee assessed? _____ Also, the city has an ordinance to collect the special expense fee. Is the special expense fee collected from the defendant?

_____

A defendant is convicted of speeding and violation of promise to appear. Is the arrest fee assessed on both charges? _____
Is the warrant fee collected on both charges? _____
If the city has an ordinance to collect the special expense fee, is the special expense fee collected on both charges? _____

Summary

- Failure to appear can be charged when a defendant has been custody and failed to appear.
- Violation of promise to appear can only be charged if the original underlying offense is a Subtitle C, T.C. offense.
- The prosecutor makes the decision about whether or not to file either the failure to appear or violation of promise to appear.
- Before any warrant may be issued, the judge or magistrate must have probable cause.
- A complaint by itself does not contain probable cause.
- A warrant of arrest, capias, summons, and a capias pro fine are all written orders issued by a judge.
- A warrant of arrest orders a peace officer to arrest an accused to be dealt with according to law.
- A capias orders a peace officer to arrest an accused and bring him or her before the court.
- A summons gives notice to a defendant of charges against him or her and gives a time and place to appear to answer the charges.
- A capias pro fine enforces the judgment by ordering the defendant be arrested and brought before the court.
- A defendant cannot be committed to jail for default of fine unless the judge determines that the defendant is not indigent and did not make a good faith effort to discharge the judgment.
- Processes are written order issued by a judge or a magistrate.
- City peace officers and marshals have authority to serve municipal court processes.
- An arrest fee of five dollars is required to be collected upon conviction if a peace officer issued a citation or made a warrantless arrest.
- A warrant fee of $50 is required to be collected upon conviction for services of a peace officer.
- If a city adopts an ordinance for the collection of a fee of up to $25 for execution of a warrant for failure to appear or violation of promise to appear, the court must collect the fee.
- The fee for the service of a summons by a peace officer is $35 and must be collected upon conviction.

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AUTHORITIES & DUTIES

Presented by

Margaret Robbins
Program Director
TMCEC

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

1. Define judicial duties and ministerial duties.
2. Explain the consequences of delegating judicial duties.
3. Identify judicial duties.
4. Identify ministerial duties.
5. Explain judges' authority to dismiss cases.
6. Define who are magistrates.
7. Identify magistrate duties.

AUTHORITY AND DUTIES

Presented by
Margaret Robbins
Program Director, TMCEC

MUNICIPAL COURT

- Statutory Court
- Authority derived from
  - Constitutions
  - State Statutes
  - City Ordinances
  - Case Law



DUTIES

- Judicial
- Magistrate
- Ministerial
- Administrative



AUTHORITY

- Judge's Authority
  - Judicial Duties
  - Ministerial Duties
  - Magistrate Duties
- Clerk's Authority
  - Ministerial Duties
  - Administrative Duties

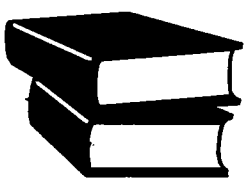
Legal Authority

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



Judicial Discretion

The judgment of the court that is exercised according to rules of law



JUDICIAL DUTIES

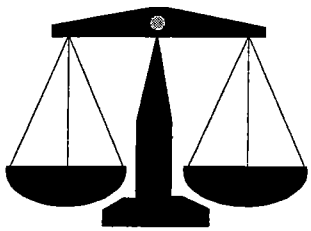
- One that requires exercise of judgment
- One that requires a decision of a question of law or fact or choice of alternatives

MINISTERIAL DUTIES

- One in which there is nothing left to discretion
- A duty that is imposed by law that is generally administrative in nature

MAGISTRATE DUTIES

- All municipal court judges are magistrates
- Duties scattered throughout codes
- Preserve peace
- Issue process to prevent and suppress crime
- Cause arrest of offenders



Administering Justice

Code of Judicial Conduct

- Canon 3B(2)
  - A judge should be faithful to the law and shall maintain professional competence in it. . .

Code of Judicial Conduct

- Canon 3C(1)
  - A judge should diligently and promptly discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.



Processing Cases

Filing Cases

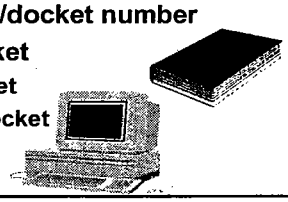
- Tickets/citations
  - Filed with court when clerk or judge accepts



  - Serves as complaint for defendant to plea to

DOCKET

- Ministerial duty
  - Can delegate to clerk
- Enter all cases on docket
- Assign cause/docket number
- Maintain docket
  - Manual docket
  - Electronic docket



Case File

- Ministerial duty
- Prepare case file
- File in active files
- Maintain files



The Defendant

Defendant

- Court waits for defendant to make decision about how he or she wants to handle case
  - Defendant appears and makes disposition
  - Defendant fails to appear

Defendant's Appearance

- In open court
- By mail
- By delivery of plea and waiver of jury trial to the court
- By mailing fine payment to court

ARRAIGNMENT

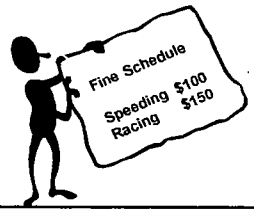
- Judicial duty
- Defendant in open court
  - Judge identifies defendant & requests a plea
- Defendant can plea guilty, no contest or not guilty
- If defendant refuses to plea, judge enters a not guilty plea and sets for a jury trial

Plea Guilty or No Contest

- Judge accepts plea
- Judge sets fine within penalty range
- Judge determines how defendant pays fine
  - Immediately
  - Time payment
  - Extension
  - Community service

Suggested Minimum Fine

- Only judge can set fine schedule
- Suggested minimum fine for defendants who do not want to contest case



Appearance by Mail

- Defendant mails in plea of no contest or guilty and waiver of jury trial and fine and court costs
  - Clerk receives
  - Clerk prepares judgment
  - Judge accepts plea
  - Judge signs judgment

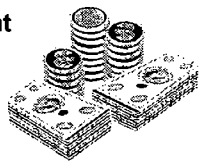


Appearance at Court

- Plea, waiver and fine and court costs delivered to court
  - Clerk receives
  - Clerk prepares judgment
  - Judge accepts plea
  - Judge signs judgment

Payment of Fine

- Defendant pays fine
  - Payment constitutes a plea of no contest and written waiver of jury trial
- Clerk receives
- Clerk prepares judgment
- Judge accept plea
- Judge signs judgment





Alternative Sentencing

Driving Safety Course

- Defendant requests DSC
  - Judge should have an established policy about processing requests
  - Clerk processes request
  - Clerk prepares judgment for judge's signature

Driving Safety Course

- Defendant presents proof of completion
  - Court must remove judgment and dismiss
- Defendant fails to comply
  - Court imposes fine
  - Defendant may pay fine or appeal

Deferred Disposition

- Judge has discretion to grant deferred disposition
- Clerk processes paperwork
- Clerk maintains file and monitors whether defendant complies with terms of probation

Deferred Disposition

- Defendant complies with terms
  - Judge dismisses case
  - Judge may assess a special expense
- Defendant fails to comply
  - Judge enters judgment
  - Judge may reduce fine
  - Defendant may appeal or pay fine



Not Guilty Plea

Plea Not Guilty

- Judge accepts plea
- Sets case for trial
- Defendant has right to jury trial

Disqualification

- Party to injured
- Been counsel for State or the accused
- Is connected to accused or victim by consanguinity or affinity within the third degree (see Chapter 573, G.C.)

Recusal

- Where judge disqualifies himself or herself from hearing a case because of interest or prejudice

Sitting for Disqualified or Recused judge

- A judge in another municipal court located in an adjacent municipality may sit
- Both parties must agree
- Objection must be filed before the first hearing or trial, including pre-trial

Sec. 29.012, G.C.

Complaint

- Complaint (Swom Affidavit)
  - Charges defendant with a crime
  - Type/prepare electronically
  - Administer oath
  - Filed with court when clerk or judge accepts

Oath
Art. 45.019, C.C.P.

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

Oath
Sec. 602.002, G.C.

- Provides authority for a municipal court judge and court clerk to administer an oath in a matter pertaining to a duty of the court

TRIALS

- Bench Trials
  - Before judge
- Jury Trials
  - Before a jury

TRIALS

- Clerk coordinates trial dates with judge, prosecutor, witnesses, and defendant
- Clerk schedules trials
- Judge establishes continuance policy (clerk has no authority to grant continuance)

TRIALS

- Clerk prepares case for trial
  - If ticket filed, prepares sworn complaint
  - Issues supboenas (Judge may also issue)
    - A written order summoning a witness to appear to testify

JURY TRIALS

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

JURY TRIALS

- Judge may direct clerk or bailiff to administer oath to veniremen before voir dire
  - Veniremen: panel of prospective jurors
  - Voir dire: questioning of prospective jurors under oath
- Judge may administer oath to jury or direct someone to administer

PENALTY

- Judge/jury determines fine within guidelines of penalty range
- Court costs collected on all convictions

APPEAL

- Defendant convicted
  - Plead guilty or no contest and found guilty, or
  - Defendant found guilty at trial
- Defendant files an appeal bond with court

APPEAL

- Clerk receives bond and stamps date and time received (keep envelope)
- Clerk gives bond to judge
  - Judge decides whether to approve bond

APPEAL

- Clerk prepares appeal
- Clerk prepares appeal transcript
- Clerk sends transcript with original papers to county court (even if judge does not approve bond)

PAYMENT OF FINE

- If no appeal, fine and costs due
- Judge determines how fine paid
  - Immediately
  - Time payment
  - Extension
  - Community service
  - Clerk cannot grant time payment or community service

Defendant Fails to Pay Fine

- Clerk monitors payments
- Clerk notifies judge when defendant fails to make payment
- Clerk prepares affidavit or gives file to judge to review
- Clerk prepares capias pro fine

CAPIAS PRO FINE

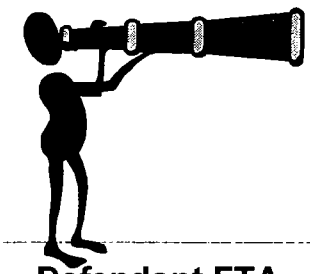
- Capias Pro Fine
  - Warrant for the judgment (fine and costs)
- Clerk gives file to judge to review
- Judge issues capias pro fine (signs)

CAPIAS PRO FINE

- Clerk notifies:
  - Police Department
  - Enters on FTA program (if contracted with DPS)
  - Notifies warrant collection agency, if any
- Clerk files case in warrant status

Default in Payment of Fine

- Judge has authority to waive fine and court costs
  - Defendant must be indigent
  - Performing community service would be an undue hardship



Defendant FTA

DEFENDANT FTA

- Clerk prepares sworn complaint if ticket filed
  - Administer oath to affiant
  - Note on docket of original case, date sworn complaint filed
  - File complaint with case file

DEFENDANT FTA

- Optional:
  - Courtesy Notice to defendant (clerk can prepare and send)
  - File FTA complaint (prosecutor makes this decision)

DEFENDANT FTA

- Probable Cause Affidavits
  - Required before judge can issue warrants
  - Required for each case
  - Affidavits sworn to before a notary public, judge or clerk

DEFENDANT FTA

- Clerk prepares warrant
- Judge determines if probable cause sufficient to issue warrant
- Judge signs warrant

DEFENDANT FTA

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

DEFENDANT ARRESTED

- Judge should have procedures for
  - Notification of arrest
  - Recalling the warrant
  - Arraignment
  - Magistration

MAGISTRATION

- Magistrate Duty
- Explaining constitutional and statutory rights to a defendant
- Magistrate can set bond
- Magistrate can take a plea and set a fine only on out-of-county arrests warrants for a fine-only offense

BONDS

- Setting bail
  - Judicial/Magistrate duty
  - Peace officer has authority to set and take if magistrate not available
- Determining sufficiency
  - Judicial/Magistrate duty
- Clerk files bond with case
- Clerk schedules case for trial

BONDS

- If defendant fails to appear for trial
  - Judge declares forfeiture & signs judgment nisi (judgment unless)
  - Clerk files case on scire facias docket (a special civil docket for bond forfeitures)
  - Clerk issues civil citation
  - Clerk may serve citation by mail
  - Clerk sets case for trial

BONDS

- If defendant appears for trial:
  - Court conducts trial
  - Judge orders bond refunded to defendant when all appearances made
  - Clerk processes refund



Judicial Duties

Judicial Duties That CAN'T Be Delegated

- Set bail
- Determine sufficiency of bonds
- Forfeit bail
- Issue warrants, capias, capias pro fine, summons
- Arraignment
- Request & accept pleas
- Enter not guilty plea
- Conduct pre-trials and trials
- Rule on motions
- Grant continuances
- Set fines
- Grant extensions and time payments
- Give jail credit

Judicial Duties that CAN'T be Delegated

- Determine Indigence
- Allow community service to discharge fine
- Set appeal bonds
- Determine sufficiency of appeal bonds
- Grant DSC
- Grant deferred disposition
- Conduct stolen or seized property hearings
- Dismiss cases in certain instances

DISMISSALS

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

DISMISSALS

- Judge required to dismiss:
  - Completion of DSC
  - Completion of Deferred
  - Completion of Teen Court
  - If inspection certificate expired less than 60 days and defendant gets valid inspection within 10 working days

DISMISSALS

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

DISMISSALS

- Judge has discretion to dismiss and charged a $10 fee when defect remedied:
  - Expired Inspection Certificate (expired more than 60 days)
  - Expired Driver's License
  - Expired Registration
- (Clerk cannot note dismissal in docket until judge signs dismissal judgment)

DISMISSALS

- Defense to Prosecution
  - Prosecutor makes a motion to dismiss
  - Proof valid at time of arrest
  - Offenses
    - Fail to present DL
    - Failure to maintain financial responsibility
    - Failure to display inspection certificate

DISMISSALS

Financial Responsibility in Effect at Time of Alleged Offense

After the court verifies a document, the court shall dismiss the charge



MAGISTRATE DUTIES

MAGISTRATE DUTIES

- Prevent family violence
- Issue warrant for offense about to be committed
- Conduct peace bond hearing
- Issue arrest warrants & summons (for Class A and B misdemeanors and felonies)
- Explain rights and warnings
- Conduct examining trials
- Set & accept bail
- Issue search warrants
- Conduct certain administrative hearings
- Issue emergency mental commitments

MAGISTRATE DUTIES

- Issue emergency protective order
  - clerk required to send copy of order to victim if victim was not present when order issued
  - Clerk or magistrate required to notify DPS of order to suspend concealed handgun license (this order may be part of emergency protective order)

MAGISTRATE DUTIES

- Search Warrant
  - Clerk shall make copy of affidavit & make is available to public after search warrant is served

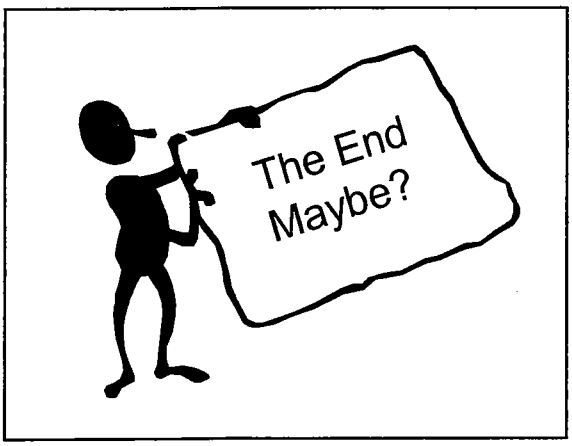


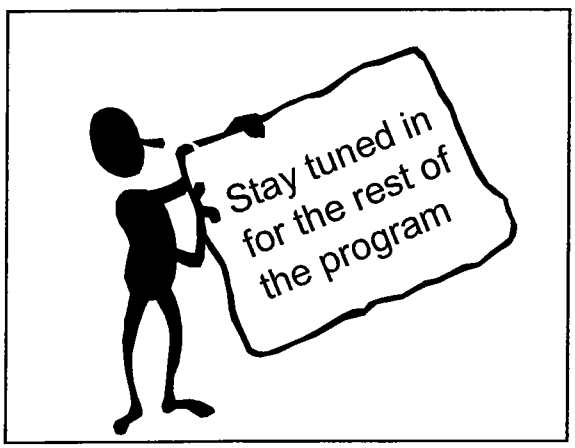
Consequences Delegating a Judicial Duty

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

Factors Determining Judicial Action Entitled to Immunity

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





Authority and Duties

Working Together: The Role of the Judge and Clerk

1. Who may accept complaints in municipal court?
    a. Judge
    b. Clerk
    c. Both

2. Which of the following may administer an oath to an affiant swearing to a complaint in municipal court:
    a. Judge
    b. Clerk
    c. Prosecutor and City Secretary
    d. All of the Above

3. Who may maintain the court docket?
    a. Judge
    b. Clerk
    c. Prosecutor
    d. All of the Above
    e. A and B only

4. Who may administer the oath to an affiant swearing to complain in Class A & B misdemeanors and felonies?
    a. Municipal Judge
    b. Clerk
    c. Magistrate
    d. District and County Attorney
    e. Both C and D

5. Request pleas from defendants
    a. Judge
    b. Clerk
    c. Magistrate
    d. Magistrate but only on out-of-county warrants for fine-only offenses
    e. A and D only

6. Which of the following may accept pleas from defendants?
    a. Judge
    b. Clerk
    c. Magistrate
    d. Magistrate but only on out-of-county warrants for fine-only offenses
    e. A and D only

7. Who may "collect" fines?
    a. Judge
    b. Clerk
    c. Magistrate
    d. Magistrate but only on out-of-county warrants for fine-only offenses
    e. A, B, and D only

8. Who may "accept" fines?
    a. Judge
    b. Clerk
    c. Magistrate
    d. Magistrate but only on out-of-county warrants for fine-only offenses
    e. A and D only

9. Who may grant extension or time payment?
    a. Judge
    b. Clerk
    c. Magistrate
    d. A and B only
    e. All of the above

10. Who may sign a judgment?
    a. Judge
    b. Clerk
    c. Magistrate
    d. Magistrate but only on out-of-county warrants for fine-only offenses
    e. A and D only

11. Which of the following may execute a warrant, capias pro fine, or summons:
    a. Judge
    b. Clerk
    c. Magistrate
    d. Peace Officer

12. True or False: A subpoena may not be served by a judge, clerk or magistrate, but may be served by either a peace officer or a person older than 18 years old who is not a party to the legal proceeding.

13. Which of the following MAY issue a capias pro fine
    a. Judge
    b. Clerk
    c. Magistrate

14. Which of the following MAY NOT issue an arrest warrant
    a. Judge
    b. Clerk
    c. Magistrate
    d. Both B and C

15. Which of the following MAY set bail
    a. Judge
    b. Clerk
    c. Magistrate
    d. Prosecutors
    e. Both A and C

16. Yes or No: May anyone other than a judge forfeit or remit bail?

17. Yes or No: May anyone other than a judge hear evidence or rule on the law or facts of a case?

18. Who may prepare and control the sequence of the trial calendar?

    a. Judge
    b. Clerk
    c. Judge or Clerk

19. True or False: The judge may only dismiss a case in limited circumstances.

20. Which of the following MAY ONLY the judge perform?

    a. Prepare state reports
    b. Determine office policy
    c. Explain procedures to defendants
    d. Grant a driving safety course or deferred disposition
    e. Prepare court budget

21. Yes or No: May a municipal judge conduct an inquest?

3

Authority and Duties

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INTRODUCTION

The single most important source of municipal court authority and jurisdiction is the Texas Constitution, which gives the State Legislature the power to establish courts and their jurisdiction when it sees fit. The Legislature exercised this power and created municipal courts in the Corporation Court Law of 1899, which has now been codified in the Texas Government Code. Municipal courts can also look to various other statutes and codes for authority and jurisdiction. In some instances, duties are prescribed by a city charter or by a city ordinance. Most daily work assignments developed to discharge official duties are, however, through procedures authorized by the judge and administered by the court clerk and other officers of the court.

Authority means the right to exercise power. Legal power or authority is the right and the power of judges to require obedience to their orders. Jurisdiction is the authority and legal power to hear and decide cases. Municipal judges are public officials who are either elected or appointed to administer laws in cities and have the authority to perform judicial, magistrate, and ministerial duties. Judicial duties may not be delegated unless expressly authorized by law. If a judicial duty is delegated to a clerk, both the judge and clerk may be subject to liability. Judges may, however, delegate ministerial duties that require no discretion and are generally administrative in nature.

The court clerk carries out the ministerial duties delegated by a judge and performs the administrative and managerial functions for the court. These duties and functions generally include being the custodian of the funds, summoning juries, administering oaths to jurors, and maintaining the trial docket.

Because statutes do not provide much direction for court clerks, clerks can look at a judge's judicial authority to get a clearer picture of the relationship between the authority of a judge and that of a court clerk. This guide introduces municipal court personnel to municipal court jurisdiction and authority; judicial, magistrate, and ministerial duties; and a court clerk's duties and authority.

PART 1
TEXAS CONSTITUTION

A. Establishes Separation of Powers

The Texas Constitution in Article II, Section 1, divides the powers of state government into three branches—legislative, executive, and judicial—and states that no person in any of the three branches may exercise the authority attached to any other branch except when expressly permitted by the Constitution. This division is referred to as the "separation of powers" doctrine.

City governments are organized primarily under the same separation of powers plan where each of the branches operate independently. The legislative branch is the city council, which is empowered to make laws (city ordinances). The executive branch, which includes the city manager, administrative and operating departments, and the police department, enforces the laws. The judicial branch, which is the municipal court, interprets laws and adjudicates

disputes under the laws. Judges set the fine amounts within the parameters of penalty clauses. City councils are not empowered to set fines for cases filed in municipal court. City councils, however, have authority to adopt ordinances and create penalties for violating the ordinances.

Courts are designed to be a buffer between the people and the legislative branch of the government. Hence, municipal judges do not use their authority to operate as a rubber stamp or an arm of the mayor, the city manager, the prosecutor, or the police department. If an ordinance is unconstitutional or there is no probable cause for an arrest, municipal judges have the authority to determine these issues and have a duty to do so. This authority ensures that citizen's rights are not being violated by the legislative or executive branches of government.

B. Gives Authority to Legislature to Establish Municipal Courts

The Texas Constitution establishes the judicial branch of the Texas government. Courts established by the Texas Constitution are constitutional courts. Judicial power is vested in the following constitutional courts:

- the Supreme Court;
- the Court of Criminal Appeals;
- courts of appeals;
- district courts;
- county courts; and
- justice of the peace courts.

The Constitution also provides the Legislature authority to establish other courts and to set their jurisdiction and organization. These courts are called the statutory courts. (Texas Constitution, Article V, Section 1) The Legislature first exercised its authority to create courts when it adopted the Corporation Court Law of 1899, which created "corporation" courts that have since been designated as municipal courts. The Legislature has now codified the Corporation Court Law into Chapters 29 and 30 of the Government Code. In Section 29.002 of the Government Code, the Legislature provides that in every municipality a municipal court is created. Hence, when a city incorporates, the Legislature has automatically created a municipal court for that city.

Q. 1. What document divides the powers of the state government? _____

_____

_____

Q. 2. What is the separation of powers doctrine? _____

_____

_____

_____

Q. 3. Name the three branches of city government. _____

_____

_____

Q. 4. Does the city council have authority to set fines for the judge? _____

_____

_____

Q. 5. List the courts established by the Texas Constitution. _____

_____

_____

_____

_____

Q. 6. What kind of courts are municipal courts? _____

_____

_____

Q. 7. When is a municipal court created in a municipality? _____

_____

_____

PART 2
JURISDICTION

Jurisdiction is the authority and legal power to hear and decide cases. Courts created by the Texas Constitution have jurisdiction granted to them by the Constitution. The Legislature can provide for more jurisdiction for these courts, but it cannot take away jurisdiction granted by the Constitution. Courts created by the Legislature have the jurisdiction granted to them by the Legislature.

The Legislature provides that certain courts have civil jurisdiction, others have criminal jurisdiction, and some courts have both civil and criminal jurisdiction.

A. Civil Cases

Courts that have civil jurisdiction have authority to hear cases that usually deal with private rights of individuals, groups, or businesses. A civil lawsuit may be brought when one person feels wronged or injured by another person.

B. Criminal Cases

A criminal case is a legal action brought by the government against a person charged with committing a crime. The following is a list of courts that have criminal jurisdiction:

- Court of Criminal Appeals;
- courts of appeals;
- district courts;
- criminal district courts;
- magistrates appointed by the judges of the district courts of Bexar County, Dallas County, Tarrant County, or Travis County that give preference to criminal cases, and the magistrates appointed by the judges of the criminal district courts of Dallas County or Tarrant County;

- county courts;
- county courts at law with criminal jurisdiction;
- county criminal courts;
- justice courts;
- municipal courts; and
- magistrates appointed by the judges of the district courts of Lubbock County.

For more information on the differences among the courts listed in Article 4.01, C.C.P., see the study guide *An Overview of the Courts.*

Q. 8. Define the term jurisdiction. _____

_____

_____

PART 3
MUNICIPAL COURT JURISDICTION

Since municipal courts are created by statute, their jurisdiction is established by statute. The Legislature provided for the municipal courts' jurisdiction in Article 4.14, C.C.P. and in Section 29.003, G.C. Both statutes give municipal courts criminal jurisdiction over offenses that have a penalty of fine only and may include also sanctions that do not include confinement. Municipal courts' jurisdiction is almost exclusively criminal, with a limited exception for municipal courts of record. Section 30.00005(d), G.C., provides for the limited civil jurisdiction for municipal courts of record.

In addition to criminal and some civil jurisdiction, municipal courts also have geographic jurisdiction. The municipal court's geographic jurisdiction includes the city's territorial limits and its extraterritorial limits. Municipal courts' geographic jurisdiction differs depending on the type of municipal court—a municipal court of non-record or a municipal court of record. A municipal court of non-record is one in which the trials are not recorded and the appeal is a new trial. A municipal court of record records its trials either by recording equipment or by a court reporter. The appeal is on the written record of the trial to determine if any error occurred during the trial.

Municipal courts subject matter jurisdiction is over Class C misdemeanors and other fine-only type of offenses. Over some of these offenses, municipal court has exclusive original subject matter jurisdiction. Over other types of offenses, municipal court shares or has concurrent subject matter jurisdiction with the justice of the peace courts and, if the court is a municipal court of record, subject matter civil jurisdiction with district and county courts.

The Legislature has also given municipal courts jurisdiction over forfeiture of appearance bonds filed in the municipal courts. A forfeiture is initiated when a defendant has a bond filed with the court to guarantee his or her appearance and fails to appear. Although case law holds that bond forfeitures are criminal cases, a bond forfeiture is unlike any other case in municipal court because the court must use the Civil Rules of Procedure.

See the following sections for a discussion of municipal courts' jurisdiction and refer to Appendix A and Appendix B for charts summarizing jurisdiction.

A. Types of Criminal Jurisdiction

1. Original Jurisdiction

Original jurisdiction means that a court has authority to try a case and pass judgment on the law and facts as distinguished from appellate jurisdiction. Courts with appellate jurisdiction generally just review the transcript of a case appealed to determine if any error has occurred. The exception to this rule is county courts (and occasionally district courts) that handle appeals from non-record municipal courts. These courts conduct a new trial as if the first trial in municipal court never occurred.

2. Exclusive Original Jurisdiction

Exclusive jurisdiction means that a court's authority to try certain cases is not shared with another court. Original jurisdiction means that a court has authority to try a case and pass judgment on the law and facts as distinguished from appellate jurisdiction. Therefore, exclusive original jurisdiction means that the court in which a case is filed has sole jurisdiction (authority over) and no other court has jurisdiction to hear and determine the case. Municipal courts have exclusive original jurisdiction over violations of city ordinances and violations of rules, resolutions, or orders of a joint airport board under Section 22.074, T.C. (Section 29.003, G.C. and Article 4.14, C.C.P.)

3. Concurrent Jurisdiction

Municipal courts share some of its jurisdiction with other courts—justice of the peace courts and district and county courts. This type of jurisdiction is called concurrent jurisdiction and means that cases may be filed in any of the courts that have authority over certain types of offenses.

a. Justice of the Peace Courts

Municipal court has concurrent jurisdiction with the justice of the peace court of a precinct in which the municipality is located in all criminal cases arising under state law that arise within the territorial limits of the city and property owned by the city in the city's extraterritorial limits and are punishable by fine-only and such sanctions, if any, as authorized by statute not consisting of confinement in jail or imprisonment. These cases may be filed in either the justice court or municipal court. (Article 4.14, C.C.P. and Section 29.003, G.C.)

b. District Courts or County Courts

The governing body of a municipality may, by ordinance, provide that the municipal court of record have civil jurisdiction within the territorial limits and the extraterritorial limits for the purpose of enforcing dangerous structures and junked vehicle ordinances. This jurisdiction is concurrent with a district court or a county court at law for the purpose of enforcing health and safety or nuisance abatement ordinances. (Section 30.00005, G.C.)

B. Types of Geographic Jurisdiction

Both municipal courts of record and municipal courts of non-record have geographic jurisdiction that is within the territorial limits of the municipality and property owned by the municipality in the municipality's extraterritorial jurisdiction. (Section 29.003, G.C. and Article 4.14, C.C.P.)

1. Municipal Courts of Record

Municipal courts of record have additional exclusive original jurisdiction in their territorial limits and their extraterritorial limits. Section 30.00005, G.C., provides that municipal courts of record have jurisdiction, as authorized by Sections 215.072, 217.042, 341.903, and 401.002, L.G.C., over city ordinance violations. These sections, in some instances, also require that the city be a home-rule city in order for the municipal court of record to have jurisdiction. A home-rule city is one that is governed by a charter, which gives it some measure of self-government. A city must have a population of at least 5,000 in order to become a home-rule city.

Sections 215.072, 217.042, 341.903, and 401.002, L.G.C., provide the following regulations:

Regulation	Cite
A municipality is permitted to inspect dairies, slaughterhouses, or slaughter pens inside or outside the municipal limits from which milk or meat is furnished to the residents of the municipality.	Section 215.072, L.G.C.
A municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet outside the limits and may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance.	Section 217.042, L.G.C.
A home-rule municipality may police the following areas owned by and located outside the municipality: (1) parks and grounds; (2) lakes and land contiguous to and used in connection with a lake; and (3) speedways and boulevards.	Section 341.903, L.G.C.
A home-rule municipality may prohibit the pollution or degradation of the city's water supply and provide protection of and police watersheds. The statute further provides that the authority granted by this statute may be exercised inside the city boundaries and in the extraterritorial jurisdiction only if the city is required to meet certain other state or federal requirements. The authority granted under this statute regarding the protection or recharge areas may be exercised outside the city boundaries within the extraterritorial limits provided that the city has a population greater than 750,000 and the groundwater constitutes more than 75 percent of the city's water supply.	Section 401.002, L.G.C.

2. Municipal Courts of Non-Record

There is no statute that gives municipal courts of non-record jurisdiction over city ordinance violations that occur anywhere in the municipality's extraterritorial jurisdiction. For non-record courts, statutes only provide authority for jurisdiction on property owned by the municipality in the municipality's exterritorial jurisdiction.

There is, however, an Attorney General Opinion that addresses the issue of jurisdiction of nuisance violations in a municipality's extraterritorial jurisdiction when the municipal court is a court of non-record. The Opinion, which was issued in March of 1999, opined that when a municipality is authorized to adopt a nuisance ordinance applicable to conduct occurring outside city limits and where the municipality has adopted such an ordinance, a municipal court has implied jurisdiction over cases arising from the violations of the ordinance that occur outside city limits. [Attorney General Opinion JC-0025 (1999)]

C. Subject Matter Jurisdiction

Subject matter jurisdiction means the types of crimes over which a court has jurisdiction. Municipal courts have subject matter jurisdiction over fine-only offenses. (Article 4.14, C.C.P. and Section 29.003, G.C.) A fine-only offense is defined as punishable by fine and any sanctions authorized by statute not consisting of confinement in jail or imprisonment. The fact that a conviction in a municipal court has as a consequence the imposition of a penalty or sanction by an agency or entity other than the court, such as a denial, suspension, or revocation of a privilege, does not affect the original jurisdiction of the municipal court. (Article 4.14, C.C.P. and Section 29.003, G.C.) For instance, Article 45.057, C.C.P., provides for rehabilitative sanctions that the court might impose upon a conviction of a person under the age of 17 for a non-traffic offense. Another example includes Chapter 106 Alcoholic Beverage Code offenses that require, upon conviction, the court to order in addition to a fine, community service, attendance at an alcohol awareness course, and the Department of Public Safety (DPS) to suspend or deny issuance of a driver's license. (Section 106.071, A.B.C.) See study guide *State and City Reports* for information on reporting these types of convictions to the DPS.

Sometimes a fine-only misdemeanor offense is generically referred to as a Class C misdemeanor. The Penal Code defines a Class C misdemeanor offense as a misdemeanor punishable by a fine not to exceed $500. (Section 12.23, P.C.) Section 12.41, P.C., defines a Class C misdemeanor outside of the Penal Code as any offense punishable by a fine only. Hence, any fine-only offense is considered a Class C misdemeanor regardless of the amount of fine. Municipal court has jurisdiction over Class C misdemeanors.

1. Violations of Ordinances, Resolutions, Rules, and Orders

Municipal courts of record and non-record have exclusive original jurisdiction that includes property owned by the municipality located in the municipality's extraterritorial limits in all cases that arise under the ordinances of the municipality and over criminal cases that arise under a resolution, rule, or order of a joint board operating an airport under Section 22.074, T.C. (Section 29.003, G.C. and Article 4.14, C.C.P.) See the chart under *B. Types of Geographical Jurisdiction* on the preceding page for more information on subject matter

jurisdiction within the municipality's extraterritorial jurisdiction if the municipal court is a court of record.

City councils may establish penalties for city ordinance violations, and joint airport boards may establish penalties for violations of a resolution, rule, or order. The types of penalties that a city or joint airport board may create are regulated by statute. The penalties must conform to the definition of fine-only offenses that a municipality has been given jurisdiction over by Article 4.14, C.C.P. and Section 29.003, G.C. These two statutes have similar provisions, except that Section 29.003 also provides for jurisdiction over resolution, rules, and orders adopted by the joint airport board. City councils and joint airport boards may establish the following penalties:

- a fine of up to $2,000 in all cases arising under the ordinances, resolutions, rules or orders that govern:
  - fire safety,
  - zoning,
  - public health, and
  - sanitation (including dumping of refuse); and
- a fine of up to $500 for all other city ordinance violations or violations of a resolution, rule, or order of a joint board.

2. Violations of Statutes

Municipal courts have concurrent jurisdiction over statutory fine-only offenses as defined by Section 29.003, G.C. and Article 4.14, C.C.P. within the territorial limits of the city and property owned by the city located in the city's extraterritorial jurisdiction with a justice of the peace court of a precinct in which the municipality or property is located.

a. Theft

Municipal court jurisdiction over theft varies depending on the amount of pecuniary loss. See Appendix B for summary of information listed below and additional related offenses. Following is a list of the theft statutes that are Class C misdemeanors and would therefore fall under the municipal court's criminal jurisdiction.

- Theft of property of a value less than $50 is a Class C misdemeanor. (Section 31.04, P.C.)
- Theft of property of a value less than $20 if the defendant obtained the property by issuing or passing a check or sight order and the person did not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders then outstanding is a Class C misdemeanor. (Sections 31.03 and 31.06, P.C.)
- Theft of services of a value less than $20 is a Class C misdemeanor. (Section 31.04, P.C.)
- Theft of service or credit by intentionally or knowingly making a false or misleading written statement to obtain property or credit for himself, herself, or

another is a Class C misdemeanor if the value of the property or the amount of the credit is less than $50. (Section 32.32, P.C.)

b. Criminal Mischief

A person commits the offense of criminal mischief if the person, without the effective consent of the owner, intentionally or knowingly damages or destroys the tangible property of the owner; tampers with tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person; or makes markings, including inscriptions, slogan, drawings, or paintings on the tangible property of the owner. Criminal mischief is a Class C misdemeanor if the amount of pecuniary loss is less than $50 (Section 28.03, P.C.) and would therefore fall under the municipal court's criminal jurisdiction.

D. Jurisdiction over Bond Forfeitures

Municipal court has jurisdiction in a forfeiture and final judgment of bail bonds and personal bonds taken in criminal cases of which the court has jurisdiction. (Article 4.14(e), C.C.P.)

E. Initiating Jurisdiction

Municipal court jurisdiction is initiated when a complaint is filed with the court charging a person with the commission of an offense. (Article 45.018, C.C.P.) Article 27.14(d), C.C.P., permits the court to use a citation (written notice to appear issued by a peace officer) filed with the court to serve as the complaint for a defendant to plea to. Both the citation and the complaint serve as charging instruments to give the defendant notice of charges filed in the court. If a complaint or a citation is not filed with the court, the court does not have jurisdiction over the defendant. Article 12.02, C.C.P., provides that a misdemeanor must be filed within two years from the date of the commission of the offense. This rule is called the statute of limitations. See study guide *Procedures before Trial* for more information on complaints.

F. Retaining Jurisdiction

The court in which a complaint is first filed retains jurisdiction. (Article 4.16, C.C.P.)

Q. 9. Since municipal courts have criminal jurisdiction, what type of offenses are violations of city ordinances? _____

Q. 10. When a defendant posts a bond with the municipal court and fails to appear, does the municipal court have jurisdiction to forfeit the bond? _____

Q. 11. What kind of cases must be initiated in municipal court and not in any other court? _

_____

_____

Q. 12. What type of jurisdiction does municipal court have over rules, resolutions, and orders of a joint airport board? _____

Q. 13. With which courts does municipal court share jurisdiction? _____

Q. 14. Over which type of offenses does municipal court share jurisdiction? _____

Q. 15. What is the geographic jurisdiction of the municipal court? _____

Q. 16. What is a municipal court of record's jurisdiction over city ordinance nuisance violations? _____

Q. 17. When a city owns a park outside its extraterritorial limits, what is municipal court's jurisdiction to hear cases charging fine-only offenses committed in the park? _____

Q. 18. What are the penalty limits of offenses over which municipal courts have jurisdiction? _____

Q. 19. Why does municipal court have jurisdiction to hear cases where a conviction may result in the Department of Public Safety suspending the defendant's driver's license?

Q. 20. Give an example of an offense that upon conviction requires a sanction in addition to paying a fine. _____

Q. 21. What is the maximum amount of a fine for a Class C misdemeanor offense in the Penal Code? _____

Q. 22. What is the maximum penalty that a city council can establish for ordinance offenses involving public health and fire safety violations? _____

Q. 23. What is municipal court's theft jurisdiction? _____

Q. 24. When does municipal court have jurisdiction over a person who has committed a crime? _____

Q. 25. When a person is issued a citation for a fine-only offense and appears in court before the officer has filed the citation with the court, does the court have jurisdiction to request and accept a plea from the person? _____

_____

_____

Q. 26. What is the statute of limitations for filing a complaint in municipal court? _____

_____

PART 4
MUNICIPAL COURT JUDGES

A. Appointed or Elected

In a general-law city, which is a city with a population of under 5,000 or one with a population of more than 5,000 that does not have a home-rule charter, the mayor is the *ex-officio* judge of the municipal court. The mayor continues as municipal judge during his or her term unless the municipality, by ordinance, authorizes the election of a judge or provides for the appointment and qualifications of a judge by ordinance. If the municipality authorizes an election, the judge must be elected in the manner and for the same term as the mayor. If the municipality authorizes the appointment, the mayor ceases to be judge on the enactment of the ordinance. The first elected or appointed judge serves until the expiration of the mayor's term. (Section 29.004(b), G.C.)

A home-rule city, which is a city governed by a home-rule charter, can designate in its city charter whether the municipal judge is elected or appointed.

B. Term of Office

A judge of a municipal court serves for a term of office of two years unless the municipality provides for a longer term pursuant to Article XI, Section 11 of the Texas Constitution. A municipal judge who is not reappointed by the 91st day following the expiration of a term of office shall, absent action by the appointing authority, continue to serve for another term of office beginning on the date the previous term of office expired. (Section 29.005, G.C.) These provisions apply to both home-rule and general-law cities.

If a municipal judge of a general-law city is temporarily unable to act, the governing body may appoint one or more persons meeting the qualifications for the position to sit for the regular municipal judge. The appointee has all powers and duties of the office and is entitled to compensation. (Section 29.006, G.C.)

The judge and alternate judges of a municipal court in a home-rule city are selected under the city's charter provisions relating to the election or appointment of judge. The judge shall be known as the "judge of the municipal court" unless the municipality by charter provides for another title. (Section 29.004(a), G.C.)

C. Oath of Office

Article XVI, Sections 1(a) and 1(c) of the Texas Constitution require all officials who are elected or appointed to take an oath of office. The oath is retained with the official records of the office. Before an official takes the oath of office, however, the official must swear to the statement of elected or appointed official. (Article XVI, Sections 1(b) and 1(d), Texas Constitution) This statement, commonly called an anti-bribery statement, must also be retained with the official records of the office. The oath and the statement are required every time an official is reelected or reappointed. The oath and statement of appointed officer must be taken before the official performs the duties of the office. The oath and statement must be sworn to and properly filed every time an official is reelected or reappointed. This includes when a city does not take action to reappoint a judge or appoint another judge by the 91st day following the expiration of a term of office and the judge then continues to serve for another term of office. Before performing any official duties of this next term, the judge must swear to and file the statement and oath of office.

A person administering an oath of office or statement of officer must have authority to administer the oath. Persons who have authority to administer any oath are listed in Section 602.002 of the Government Code and include:

- a judge, clerk, or commissioner of a court of record;
- a justice of the peace or a clerk of a justice court;
- a retired or a senior judge of a court of record;
- a notary public;
- the attorney general;
- the secretary of state;
- the lieutenant governor;
- the speaker of the house of representatives;
- legislators and retired legislators; or
- the governor.

D. Duties

1. Judicial Duties

Judicial duties require an exercise of judgment, a decision of a question of law or fact, or a choice of alternatives. A question of law is an issue involving the application or interpretation of a law. A question of fact is an issue involving resolution of a factual dispute.

Judicial discretion is the exercise of judicial judgment. Judges' discretion to make decisions must be guided by law and be based on facts and is the power to determine what, under existing circumstances, is right or proper.

The choices made by judges must be lawfully available choices or alternatives. When a law prescribes a certain way to perform a certain action, judges have no discretion. Judicial acts include accepting pleas, levying fines and setting bonds, dismissing cases when permitted by

statute, issuing warrants and *capiases*, or granting driving safety courses. [Attorney General Opinion H-386 (1974)]

For judges to properly exercise judicial discretion, they need a thorough understanding of statutes and cases relevant to the jurisdiction of the court. Judicial discretion is not unrestrained and must be exercised to give effect to the purpose of the law for the interest of justice.

Judicial duties may not be delegated unless expressly authorized to do so. [*Newsom v. Adams*, 451 S.W.2d 948 (Tex. Civ. App.–Beaumont 1970, no writ)]; [Attorney General Opinion H-386 (1974)] Hence, a judge is not permitted to delegate to a court clerk a duty that the judge is required to perform, such as taking a plea or setting a fine. Other duties that judges may perform, such as ministerial duties, may be delegated to court clerks because ministerial duties require no discretion and are generally administrative in nature, such as keeping and maintaining a docket, preparing paperwork for the judge's signature, maintaining files, and providing customer service to court users.

a. Judicial Duties that May Not Be Delegated

The list below, although not inclusive, presents judicial duties that *may not* be delegated to a clerk.

Judicial Duty	Cite
Set and take bail	Article 17.14, C.C.P.
Forfeit bail	Articles 4.14 and 45.044, C.C.P. and Section 29.003(e), G.C.
Take and accept pleas of guilty, *nolo contendere*, or not guilty	Articles 27.14, 27.16, 45.021, 45.0215, 45.022, and 45.024, C.C.P.; Attorney General Opinion H-386
Arraign defendants (Arraignment is a procedure in which a judge identifies the defendant and requests a plea.)	Article 26.02, C.C.P.
Enter a plea of not guilty for a defendant who refuses to plead	Article 45.024, C.C.P.
Conduct pre-trial hearings	Article 28.01, C.C.P.
Grant continuances	Chapter 29, C.C.P.
Conduct trials	Articles 45.025, 45.027, and 45.030 C.C.P.
Rule on challenges to the array (membership) of the jury pool	Article 36.07, C.C.P.
Enter judgments	Article 45.041, C.C.P.

Judicial Duty	Cite
Grant jail-time credit	Articles 42.03, 45.041, and 45.048, C.C.P.
Determine how a defendant pays fine and costs (time payment, extensions, community service)	Articles 45.041 and 45.049, C.C.P.
Determine indigence	Articles 43.091, 45.048, and 45.049, C.C.P.
Waive fine and court costs after a defendant defaults and the judge determines that the defendant is indigent and that performing community service would be an undue hardship	Article 43.091, C.C.P.
Rule on a motion for new trial	Article 45.037, C.C.P.
Approve appeal bonds	Article 45.0425, C.C.P.
Issue arrest warrants for defendants whose cases are filed in municipal court	Article 45.014, C.C.P.
Issue a *capias pro fine*	Article 45.045, C.C.P.
Issue a *capias*	Article 23.04, C.C.P.
Issue a summons for a defendant when requested by the prosecutor	Article 23.04, C.C.P.
Issue a summons for a parent of a person under the age of 17	Articles 45.0215 and 45.054, C.C.P.
Grant deferred disposition	Article 45.051, C.C.P.
Grant teen court	Article 45.052, C.C.P.
Grant driving safety courses	Article 45.0511, C.C.P.
Conduct stolen or seized property hearings	Chapter 47, C.C.P.
Dismiss cases when required by law or upon prosecutor motion	Article 32.02, C.C.P.

b. Consequences of Delegating Judicial Duties

If a judge delegates a judicial duty to a court clerk, there can be consequences. A number of cases illustrate such consequences.

Sharp v. State

In the case *Sharp v. State*, 677 S.W.2d 513 (Tex. Crim. App. 1984), a City of Houston municipal court clerk issued a *capias* for violating the "helmet safety law." The defendant was later arrested on the *capias* and as a result of this arrest was charged with and convicted of possession of methamphetamine. The defendant appealed the possession case. The appellate court held that the deputy municipal court clerk did not have authority to issue a

capias. Because a magistrate (judge) failed to direct the issuance of the *capias* and to determine probable cause, the defendant's arrest was illegal; thus, the evidence discovered as a direct result of the arrest had to be suppressed.

The procedure to prosecute in Houston was initiated with the officer's ticket. According to the established procedures, if the defendant failed to appear in court to answer the complaint, the clerk was delegated the authority to stamp the judge's name on and to issue the *capias*. The Court of Criminal Appeals reviewed this procedure and found that, although Texas municipal clerks were empowered to perform ministerial tasks, such as preparing process under the direction of the judge, they were neither authorized nor trained to determine probable cause to support a warrant ordering a citizen to be arrested. There was no evidence that a judge intervened at any point in the process. The Court of Criminal Appeals concluded that since the judge did not determine whether there was probable cause to issue the arrest warrant, and since the judge did not direct the issuance of the *capias*, the defendant's arrest was illegal. Hence, all evidence obtained from the arrest was excluded.

Crane v. Texas

Another case, *Crane v. Texas,* 759 F.2d 412 and 766 F.2d 193 (5th Cir. 1985) points out civil liability when a judge allows someone else to devise a policy delegating a judicial duty. In this case, a district attorney and county attorney were held civilly liable and denied governmental immunity because they devised a policy authorizing the county clerk rather than the judge to issue misdemeanor *capiases*.

Daniels v. Stovall

In still another case, *Daniels v. Stovall,* 660 F. Supp. 301 (S.D. Tex. 1987), a judge delegated a judicial duty to a court clerk, and the clerk performed the duty. In this case, a justice of the peace delegated his authority to affix his rubber stamped signature to a mental health warrant outside his presence. He reviewed the warrant and adopted it the next business day. The court cited favorably Attorney General Opinion JM-373 (1985), which states that a judge may not delegate authority to affix her or his signature unless the signature is affixed under the judge's personal supervision. Generally, judges have absolute immunity for damages for acts performed in their judicial capacity. This case found, however, that since the judge delegated a judicial duty to his clerk and the clerk performed the duty, neither was immune from civil liability.

In *Daniels*, the court discussed the approved factors for determining whether a particular action is a judicial action that would be entitled to immunity. The issuance of a mental commitment order is a judicial act, but the manner in which it was issued prevented the act from being covered by judicial immunity. The case set forth factors for determining whether a particular action is judicial. The factors are:

- whether the precise act complained of is a normal judicial function;
- whether the act occurred in the courtroom or appropriate adjunct spaces such as the judge's chambers;
- whether the controversy centered around a case pending before the court; and
- whether the act arose directly out of a visit to the judge in his or her official capacity.

2. Magistrate Duties

Municipal judges and mayors are magistrates. (Article 2.09, C.C.P.) Magistrate authority is additional power and authority granted by the Texas Legislature. Case law provides that a magistrate's authority is countywide. [*Gilbert v. State*, 493 S.W.2d 783 (Tex. Crim. App. 1973)] A mayor who is not a municipal judge can only perform magistrate duties and not judicial duties. Magistrate duties, like judicial duties, cannot be delegated to municipal court clerks.

a. General Duties

Although magistrate duties are broad and scattered throughout various statutes and codes, generally, the duties of every magistrate is to preserve the peace within his or her jurisdiction by issuing process intended to help prevent and suppress crime and to cause the arrest of offenders in order that they may be brought to punishment. (Article 2.10, C.C.P.)

b. Magistrate Duties that Municipal Judges Can Perform

The following is a list, although not inclusive, of magistrate duties that a municipal judge has the authority to perform as a magistrate.

Magistrate Duties	Cite
Prevent family violence	Article 5.03, C.C.P.
Issue emergency protection orders for an offense involving family violence	Article 17.292, C.C.P.
Issue a warrant when any person informs the judge, under oath, of an offense about to be committed	Article 7.01, C.C.P.
Conduct peace bond hearings	Article 7.03, C.C.P.
Verbally order a peace officer to arrest without warrant when a felony or breach of the peace is committed in the presence or within the view of a magistrate	Article 14.02, C.C.P.
Accept complaints (probable cause affidavit) and issue arrest warrants and summonses (These complaints are for Class A and B misdemeanors and felony offenses.)	Article 15.17, C.C.P.
Give magistrate warning after arrest	Article 15.17, C.C.P.
Take a plea and set and collect a fine when a defendant is arrested on an out-of-county warrant for a fine-only offense	Article 15.18, C.C.P.
Conduct examining trials in felony cases (An examining trial is to determine probable cause in felony cases prior to indictment.)	Article 16.01, C.C.P.

Magistrate Duties	Cite
Determine the sufficiency of sureties	Chapter 17, C.C.P.
Order a defendant to submit to an examination in a mental health facility determined by a local mental health authority on that authority's request	Article 16.22, C.C.P.
Set and accept bail, including personal bonds	Chapter 17, C.C.P.
Issue search warrants, except one for mere evidence unless the judge is a licensed attorney of a court of record	Chapter 18, C.C.P.
Move to dispose of the weapon if no prosecution or conviction will occur when a weapon has been seized	Article 18.19, C.C.P.
Conduct license suspension hearings when the defendant has committed the following: • driving while license suspended; • has been responsible as a driver for any accident resulting in serious personal injury, property damage, or death; • habitual, reckless, or negligent driving; • incapable of safe driving; • has permitted an unlawful or fraudulent use of license; • committed an offense in another state that if committed in this state would be grounds for suspension or revocation; • has violated a restriction imposed on the use of the license; • is under 18 years of age and has been convicted of two or more moving violations committed within a period of 12 months; • has not complied with terms of a citation issued by a jurisdiction that is a member of the Nonresident Violator Compact of 1977 (now codified in Chapter 703, T.C.) for a violation to which the compact applies; • has a warrant of arrest outstanding for failure to appear or pay a fine on a complaint issued by a political subdivision that has contracted with the Department of Public Safety under Chapter 702, T.C.; • has committed the offense of fleeing or attempting to elude a police officer;	Subtitle B, T.C.

Magistrate Duties	Cite
Conduct license suspension hearings when the defendant has committed the following: (continued) • has failed to provide medical records or has failed to undergo medical examinations as required by a panel of the Medical Advisory Board; • has failed to take or failed to pass an examination required by the director under the Driver's License Act (now codified into Subtitle B, T.C.); • been convicted two times of not maintaining liability insurance; • is not financially responsible or lacks liability insurance in effect for injuries or property damage at the time of being involved in an accident; and • evidenced a substantial risk of serious harm to himself, herself, or others (commitment is to the nearest appropriate inpatient mental health facility).	Subtitle B, T.C.

3. Ministerial Duties

Ministerial duties are duties in which there is nothing left to discretion or are duties imposed by law, such as maintaining dockets. They are generally administrative in nature and pertain to effectively and efficiently managing the cases filed in the court. Although Canon 3C(1) of the *Code of Judicial Conduct* requires judges to diligently and to promptly discharge administrative responsibilities and to maintain professional competence in judicial administration, judges typically delegate ministerial and administrative duties to the clerks.

Statutes provide little guidance regarding ministerial duties. It is only in understanding judicial duties and knowing what a judge cannot delegate that courts determine what duties are ministerial and administrative. Generally, ministerial and administrative duties comprise the following duties, which can be performed by either judges or clerks:

- records management;
- financial management;
- office management;
- preparation of processes (warrants, *capias, capias pro fine*, judgments, summonses, subpoenas, orders);
- preparation of paperwork for defendants requesting a driving safety course (Only a judge may grant a driving safety course, but the clerk may process the paperwork.);
- preparation of the budget;
- collection of data for and timely submission of state reports;
- coordination of trial processes;

- coordination of community service and other alternative sentencing options; and
- coordination of enforcement orders with the police department.

E. Authority

1. Administering Oaths

Article 45.019, C.C.P., grants the power to administer the oath to a person swearing to a complaint before the municipal court. The following court officials have the authority to administer this type of oath:

- municipal judges,
- clerks of the court,
- deputy court clerks,
- city secretaries,
- city attorneys, and
- deputy city attorneys.

Section 602.002, G.C., provides authority for a municipal judge, a retired municipal judge, or clerk to administer an oath in any matter pertaining to a duty of the court. In general-law cities, Section 29.006, G.C., provides that a judge appointed to act for the municipal judge, who is temporarily unable to act, has all powers and duties of the office. In home-rule cities, Section 29.007, G.C., provides that associate judges have the same powers as the presiding judge. Therefore, associate or alternate judges have the authority to administer oaths pertaining to a duty of the court.

2. Dismissing Cases

The common law rule is that prosecutors have the power to dismiss, absent specific statutory authority to the contrary. Texas law has generally followed that rule, but Texas law includes judges in the dismissal process. (Article 32.02, C.C.P.) Accordingly, unless there is constitutional or statutory authority vesting a trial court with dismissal power, criminal prosecutions may be dismissed only on the motion of the prosecuting attorney. [*State v. Morales*, 804 S.W.2d 331 (Tex. App.—Austin 1991)] While it is clear that the usual rule is that courts may not dismiss without the prosecutor's consent, it is equally clear that prosecutors cannot dismiss without the court's consent. [*State v. Johnson*, 821 S.W.2d 609 (Tex. Crim. App. 1991)]

If the prosecutor decides not to prosecute a case, the prosecutor must provide a reason in writing for the dismissal. The court files the statement with the other papers in the case and incorporates the reason into the judgment of dismissal. Article 32.02, C.C.P., requires judicial consent or approval for a case to be dismissed. The requirement of judicial consent or approval has been called a judicial veto. The general rule is that a judge cannot dismiss a case, except by consenting to and approving a prosecutor's motion and the grounds presented. [*Flores v. State*, 487 S.W.2d (Tex. Crim. App. 1972)] There are, however, a few exceptions to this rule. See the next section for examples of the exceptions.

a. Mandatory Judicial Duty to Dismiss

Some statutes create a mandatory judicial duty to dismiss a criminal charge. In these instances, judges are allowed to dismiss, with or without a prosecutor's motion. Examples of laws imposing a duty to dismiss on the judge or court include the following.

Duty to Dismiss	Cite
When a person presents evidence of completing a driving safety course, a copy of his or her driving record as maintained by the Texas Department of Public Safety, and an affidavit stating that he or she was not taking a driving safety course or a motorcycle operator training course at the date of request for the course nor had he or she taken a course that is not yet reflected on his or her driving record, the court shall dismiss the charge and report to the Department of Public Safety the date the course was completed.	Article 45.0511, C.C.P.
When a person presents satisfactory evidence of compliance with the terms of deferred disposition, the judge is required to dismiss the complaint, note the dismissal in the docket, and record no final conviction.	Article 45.051, C.C.P.
When a person presents satisfactory evidence of completion of a teen court program, the court is required to dismiss the charge.	Article 45.052, C.C.P.
When evidence is presented that a person was committed for and completed court-ordered treatment for chemical dependency, the court is required to dismiss the charge, note the dismissal in the docket, and record no final conviction.	Article 45.053, C.C.P.
When an inspection certificate is expired less than 60 days and the driver gets an inspection and a new certificate within 10 working days, a judge must dismiss the charge of driving with expired inspection.	Section 548.605, T.C.

b. Discretion to Dismiss

The following are examples of laws that grant the judge discretion to dismiss a charge, but they do not create a legal duty to dismiss.

Discretion to Dismiss	Cite
A judge has discretion to dismiss the charge of driving with an expired driver's license if the driver renews the license within 10 working days.	Section 521.026, T.C.
A judge has discretion to dismiss the charge of driving with expired registration if the driver renews the registration within 10 working days and proves that any delinquent fees due have been paid.	Section 502.407(b), T.C.

Discretion to Dismiss	Cite
A judge has discretion to dismiss the charge of driving with expired inspection sticker if the inspection certificate is expired more than 60 days.	Section 548.605, T.C.

c. Defenses to Prosecution

In some instances, statutes create a defense to the prosecution for certain actions. In these instances, the judge needs a motion from the prosecutor to dismiss or, at trial, to have a finding of not guilty. Generally, the prosecutor examines the proof and upon determining that it is sufficient, makes a motion to the court to dismiss the charge. Examples of defenses to the prosecution are noted in the following list.

Defenses to Prosecution	Cite
When a defendant is charged with failure to display an inspection certificate, it is a defense to the prosecution if the inspection certificate for the vehicle is in effect at the time of the arrest.	Section 548.602(c), T.C.
When a defendant is charged with not possessing a driver's license while operating a motor vehicle, it is a defense to the prosecution to present a driver's license that was valid at the time the citation was issued.	Section 521.025(d), T.C.
In a case in which a defendant is charged with the offense of failure to maintain financial responsibility, the defendant is presumed to have operated the vehicle without any type of financial responsibility unless the person produces evidence of financial responsibility that was valid at the time the citation was issued. If the defendant can produce such proof and the court verifies the document, the court must dismiss the case. Although the statute does not address who should do the verification, in no instance should the judge do it.	Section 601.193, T.C.

3. Determining Constitutionality of Ordinances

Courts are designed to be a buffer between the people and the legislative branch of the government. When a case involving a city ordinance is brought before the municipal court and a question is raised as to whether the ordinance is in conflict with the Constitution, municipal judges may decide the constitutionality of an ordinance.

4. Authenticating Acts

Article 45.012, C.C.P., requires municipal courts to impress a seal on all documents, except subpoenas, issued out of the court and to use the seal to authenticate the acts of the judge and clerk. This statute is a general statute and applies only to non-record municipal courts because municipal courts of record have a specific statute, Section 30.0000125, G.C., regarding their seal. These two statutes are similar in that they both require the seal to be

impressed on all documents, except subpoenas, and to authenticate the acts of the judge and clerk. The two statutes are different in that Article 45.012 does not provide for the wording of the seal, but Section 30.0000125 does contain specific wording for the municipal courts of record seal. That statute requires the following phrase to be included on the seal: "Municipal Court of/in_____, Texas." Non-record municipal courts may want to consider using the same or similar wording on their seal.

Unfortunately, neither of the two statutes provides for the appearance of the seal. Before 1999, there was a statute, Article 45.02, C.C.P., requiring the municipal court seal for both record and non-record municipal courts to contain a five-point star, but that statute was repealed. Although the courts now have no guidance on the appearance of the seal, most courts have retained the appearance that was once required by Article 45.02, C.C.P.

5. Controlling the Courtroom

Statutes and the *Code of Judicial Conduct* require judges to maintain order and decorum in the courtroom and to conduct proceedings with dignity in an orderly and expeditious manner so that justice is done. To maintain control, judges have contempt power to regulate conduct in the courtroom. The power must be reasonably exercised and not arbitrary. Persons in a courtroom should understand the type of conduct required and the consequences of not complying. Judges should establish rules and procedures for courtroom conduct and notify the public of those rules. Then a judge has a reasonable basis for the standards required in the courtroom.

F. Disqualification or Recusal

When a municipal judge is disqualified or recused, only a judge with authority to try cases in that court may sit for the presiding judge. Section 29.012, G.C., provides that a judge from another municipal court located in an adjacent municipality may sit for that judge. A municipal judge may not sit in a case for another judge if either party objects in writing before the first pre-trial hearing or trial over which the judge is to preside. (Section 29.012, G.C.) If there is no adjacent municipality or if there is an adjacent municipality but there is an objection to that judge sitting on the case, the city must appoint an alternate judge to hear the case.

Chapter 30 of the Code of Criminal Procedure provides causes that disqualify a judge. The causes are when a judge:

- is the injured party;
- has been counsel for the state or the accused; or
- is connected to the accused or the party injured by consanguinity or affinity within the third degree as determined under Chapter 573, G.C.

Judges must recuse themselves for one of the above listed causes for disqualification or because of interest or prejudice. (Canon 3B(5), Code of Judicial Conduct)

Q. 27. When can a mayor in a general-law city also be the municipal judge? _____

Q. 28. What governs the selection of municipal judges in a home-rule municipality? _____

Q. 29. What must a general-law city do when a municipal judge is temporarily unable to act?

Q. 30. What is a question of law? _____

Q. 31. What is a question of fact? _____

Q. 32. What is judicial discretion? _____

Q. 33. When does a judge not have discretion to perform an action? _____

Q. 34. Which kind of duty may a judge delegate to a court clerk? _____

True or False

Q. 35. Judges cannot delegate judicial duties to a court clerk. _____

Q. 36. Clerks may set and take bail from a defendant. _____

Q. 37. When a defendant comes to the court clerk's office, the clerk may ask the defendant how he or she wants to plea. _____

Q. 38. When a defendant calls the court to request that the clerk reset his or her case to another trial date, the clerk may grant the continuance and reset the case. _____

Q. 39. Clerks may not conduct trials. _____

Q. 40. Clerks may set penalties. _____

Q. 41. Clerks may grant extensions and time payment plans to defendants. _____

Q. 42. Clerks may require a defendant to pay a fine by performing community service. _____

Q. 43. The judge has the authority to waive the fine and costs only after the defendant defaults on payment and is indigent and is unable to perform community service. _____

Q. 44. Clerks may not issue arrest warrants. _____

Q. 45. Municipal court clerks have the authority to issue a *capias*. _____

Q. 46. Only a judge may issue a summons. _____

Q. 47. If a judge is not available, the clerk may grant deferred disposition or teen court. _____

Q. 48. Judges can permit clerks to perform judicial duties and then later adopt the actions of the clerk. _____

Q. 49. Municipal court clerks may stamp the judge's signature on court documents when the judge is on vacation. _____

Q. 50. When a judge is only in the office part-time, the clerk may use the judge's signature stamp to sign judgments on cases in which a defendant pays a fine at the clerk's office. _____

Q. 51. Municipal court clerks may stamp the judge's signature on mental health commitments if the judge is not available and it is an emergency. _____

Q. 52. Municipal court clerks cannot be held liable for performing a judicial duty if the judge requires the clerk to perform the duty. _____

Q. 53. Municipal judges are also magistrates. _____

Q. 54. Municipal judges may perform a duty that a magistrate has the authority to perform. _____

Q. 55. Municipal judges may issue emergency protection orders for an offense involving family violence. _____

Q. 56. Only justices of the peace may conduct peace bond hearings. _____

Q. 57. Municipal judges may accept a complaint (probable cause affidavit) for a felony. _____

Q. 58. Municipal court clerks may give magistrate warnings after a defendant is arrested if the municipal judge is not available. _____

Q. 59. Municipal judges acting as magistrates may issue search warrants. _____

Q. 60. Only justices of the peace may conduct license suspension hearings. _____

Q. 61. Judges may delegate ministerial duties to clerks. _____

Q. 62. Usually, clerks are responsible for establishing and maintaining a financial management program for the court. _____

Q. 63. Although presiding judges have authority to administer the oath to someone swearing to a complaint, associate judges do not. _____

Q. 64. A municipal judge can dismiss a case filed by a citation if the peace officer asks for the dismissal. _____

Q. 65. When defendants present proof that they renewed an expired driver's license, the clerk may dismiss the case. _____

Q. 66. Clerks may dismiss cases in which defendants renew an expired inspection certificate. _____

Q. 67. Clerks may dismiss an offense for failure to maintain financial responsibility if the judge is on vacation. _____

Q. 68. A municipal judge can declare a city ordinance unconstitutional. _____
End True/False

Q. 69. What power does a judge have to exercise control in the courtroom? _____

Q. 70. Who can sit for a municipal judge who is disqualified or must recuse himself or herself? _____

PART 5
MUNICIPAL COURT CLERKS

A. Appointed, Elected, or Hired

A general-law city is one with a population under 5,000 or has a population of more than 5,000 that does not have a home-rule charter. A general-law city is governed by the general laws of the state. Section 29.010, G.C., provides for the election or the appointment of a municipal court clerk in general-law cities.

When a municipality provides for the election of a municipal judge, the municipal court clerk is elected in the same manner, unless by ordinance, the city secretary serves as clerk. A city secretary who serves as clerk may be authorized to appoint a deputy clerk. (Section 29.010(a), G.C.) The position of deputy court clerk is not mentioned in the statutes. Generally, deputy court clerks are hired employees.

A home-rule city has a governing charter and, therefore, has a measure of self-government. The position or office of court clerk in a home-rule city is governed by the city's charter, ordinance or personnel policy that can provide for the court clerk to be appointed, elected, or hired.

B. Term of Office

In general-law cities, the municipal court clerk serves a two-year term of office unless the municipality provides for a longer term pursuant to Article XI, Section 11 of the Texas Constitution. If the city secretary serves as clerk, the term of office is during the term of the city secretary. (Section 29.010(b), G.C.)

If the office of municipal court clerk becomes vacant, the governing body of the city shall by appointment fill a vacancy for the unexpired term of office. (Section 29.011, G.C.)

Home-rule cities that provide for the election or appointment of the court clerk can provide for a term of not less than two years or more than four years pursuant to Article XI, Section 11 of the Texas Constitution.

C. Oath of Office

Article XVI, Sections 1(a) and 1(c) of the Texas Constitution requires officials who are elected or appointed to take an oath of office. Before taking the oath of office, the official

must swear to the statement of officer and retain the signed statement with the official records of the office. (Article XVI, Sections 1(b) and 1(d), Texas Constitution) The statement is commonly called an anti-bribery statement and is required every time an official is reelected or reappointed. The oath and statement of appointed officer must be taken before the performing any duties of office.

A person administering an oath of office or the statement of officer must have authority to administer the oath. Section 602.002, G.C., lists persons who have authority to administer any oath; they include:

- a judge, clerk, or commissioner of a court of record;
- a justice of the peace or a clerk of a justice court;
- a retired or a senior judge of a court of record;
- a notary public;
- the attorney general;
- the secretary of state;
- the lieutenant governor;
- the speaker of the house of representatives;
- legislators and retired legislators; or
- the governor.

Section 29.007(f), G.C., provides that in home-rule cities that have established the office of municipal court clerk (the clerk is either appointed or elected), the clerk has authority to administer oaths. This statute does not make any exceptions to this authority. Hence, the court clerk could administer an oath of office.

D. Duties

1. General Duties

Clerks perform ministerial and administrative duties. Section 29.010(c), G.C., provides general ministerial duties of a municipal court clerk. The statute requires a municipal court clerk to keep minutes of court proceedings, issue process, and generally perform the duties for the municipal court that a county clerk performs for a county court.

Because statutes do not contain many specific duties for municipal court clerks, it helps to look at the general duties of the county court clerk. As can be seen in the chart below of general county clerk duties, there can be an analogy made with municipal court clerk duties. This list is not inclusive of every county clerk duty because many of their duties are specific to the county court and do not apply to municipal court. Set out in the chart on the next page is a list of general duties of county court clerks and duties in municipal court that correspond.

County Clerk Duties	Corresponding Municipal Clerk Duties
Deposit fines and jury fees in the county treasury.	Deposit fines and fees in the city treasury.
Make a statement of fines and fees collected on the last day of each term of court.	Usually make monthly reports to the city council of fines and fees.
Show from whom fees are received.	Keep records of money collected in order to properly account for the money.
List jurors' names and length of service.	Keep records of names and length of service of citizens who serve on municipal court juries.
Transfer cases. (Section 51.402, G.C.)	A transfer of a case is generally not applicable to municipal courts except when transferring a juvenile to the juvenile court for lack of jurisdiction because of two prior convictions for non-traffic offenses, or when a change of venue for a person allowed to participate in a teen court program has been granted. See the study guide *Juveniles and Minors* for more information on these transfers.
Destroy archived, inactive records. (Section 51.603, G.C.)	Oversee the destruction of municipal court records retained for a period of time required by the state. (Clerks should check with the city secretary for a copy of the city's ordinance governing the retention and destruction of records. The ordinance must have been approved by the State Archives Division of the State Library. If a city does not have an ordinance, the clerk must get permission from the State Library to destroy records.)
Maintain fee books. (Article 103.009, C.C.P.)	Keep a record of all fines, fees, court costs, and restitution collected by the court as part of good financial management. See Level II guide on *Financial Management.*
Report monthly to the Office of Court Administration court statistics.	Report monthly court statistics to the Office of Court Administration. See the guide *State and City Reports*.

Statutes provide little guidance regarding ministerial duties. It is only in understanding judicial duties and knowing what a judge cannot delegate that courts determine what duties are ministerial and administrative. Generally, ministerial and administrative duties comprise the following duties, which can be performed by either judges or clerks:

- records management;

- financial management;
- office management;
- preparation of processes–warrants, *capias, capias pro fine*, judgments, summonses, subpoenas, orders – (Note: Clerks may only prepare the paperwork. They do not issue, sign, or stamp the judge's signature on the documents. The only exception to stamping the judge's signature is at the judge's direction *and* in the judge's presence.);
- preparation of paperwork for defendants requesting a driving safety course (Only a judge may grant a driving safety course, but the clerk may process the paperwork.);
- preparation of the budget;
- collection of data for and timely submission of state reports;
- coordination of trial processes;
- coordination of community service and other alternative sentencing options; and
- coordination of enforcement orders with the police department.

2. Required Duties

The following is a list, although not inclusive, of duties that court clerks are required to perform:

Required Clerk Duties	Cite
Every clerk of a court of record shall keep a record of each case in which a person is charged with a violation of law regulating the operation of vehicles on highways. Magistrates and judges of non-record courts are required to keep these records, but they usually delegate this duty to the clerk.	Section 543.201, T.C.
The clerk of every court in which there is a conviction or forfeiture of bail in a case involving a traffic offense must report the conviction or forfeiture of bail to the Department of Public Safety (DPS) within 30 days of the conviction or forfeiture. Judges and magistrates are also required to report. See study guide *State and City Reports* for more information on reporting to the DPS.	Section 543.203, T.C.
When a person files with the court a permanent exemption from jury duty, the clerk is required to promptly deliver a copy of the permanent exemption to the county tax assessor-collector.	Sections 62.107(c) and 62.108(a),(c), and (d), G.C.

Required Clerk Duties	Cite
When a jury shuffle is demanded, the clerk is required to randomly select jurors by computer or another process of random selection and shall write or print the names in the order selected on a jury list; the clerk shall deliver a copy of the list to the prosecutor and to the defendant or his or her attorney. See study guide *Trial Procedures* to learn about a jury shuffle.	Sections 62.107(c) and 62.108(a), G.C.; Article 35.11, C.C.P.
When a defendant appeals, the clerk is required to forward the record to the appellate court.	*Whitsitt v. Ramsay*, 719 S.W.2d 333 (Tex. Crim. App. 1986)
When a forfeiture has been declared upon a bond, the court (judge) or clerk shall docket the case upon the *scire facias* (a special docket for bond forfeitures) or upon the civil docket.	Article 22.10, C.C.P.
If a victim of family violence is not present when an emergency protection order is issued, the clerk is required to send a copy of the order to the victim.	Article 17.2929(g), C.C.P.
If a magistrate suspends a concealed handgun license when issuing a magistrate's emergency protection order, the judge or the clerk is required to immediately notify the Texas Department of Public Safety.	Article 17.293, C.C.P.
A magistrate's clerk is the custodian of any arrest warrants or affidavits made in support of the warrant. The warrants and affidavits are public information and the clerk has an affirmative duty to make a copy of the warrants and supporting affidavits available for public inspection after the warrants are executed.	Article 15.26, C.C.P.
Clerk is prohibited, and thereby presumptively the court, from requiring the presence of the defendant in order to accept a waiver of arraignment from an attorney representing the defendant.	Article 26.011, C.C.P.

3. Administrative Functions

Municipal court clerks generally perform administrative functions of the court, including:

- preparing process (complaints, warrants, *capiases*, summons, subpoenas, etc.);
- preparing correspondence and notices;
- processing fine payments and bonds (appearance and appeal bonds);
- maintaining accounting records of the court;
- managing the office;
- coordinating trials and appearances (includes juvenile cases);
- maintaining records;

- producing reports:
  - monthly reports to the Texas Judicial Council;
  - notice of final convictions (reported to DPS);
  - notice of the completion date of driving safety course (reported to DPS);
  - fines collected for thwarting compulsory attendance law (reported to school district where child attends or juvenile justice program a child is ordered to attend);
  - teen court dismissals (reported to DPS);
  - quarterly and monthly court costs reports (reported to State Comptroller's Office);
  - excess highway fines (reported to State Comptroller's Office);
  - notice of violation of *Nonresident Violator Compact* (reported to DPS);
  - reports to city council, city manager, and judge; and
  - summary status reports;
- coordinating alternative sentencing (driving safety courses, deferred disposition, community service, teen court);
- processing dismissals:
  - dismissals at trial;
  - valid driver's license dismissals;
  - valid proof of financial responsibility;
  - remedying defects dismissals; and
  - other dismissals;
- processing and coordinating warrant issuance and service;
- managing personnel;
- maintaining a database, if automated;
- coordinating administrative and other hearings;
- processing bond forfeitures;
- processing cash bond forfeitures;
- overseeing budget;
- accepting complaints and entering on docket; and
- performing any other ministerial function as may be delegated by the judge.

4. Custodian of the Funds

Article 17.02, C.C.P., requires peace officers to deposit cash bond money with the custodian of the funds of the court. Generally, the court clerk is designated as the custodian of the funds of the court.

5. Summoning the Jury

When a defendant does not waive a trial by jury, the judge must issue a writ (written order) commanding the proper officer to summon a venire (a list of prospective jurors) from which six qualified persons shall be selected to serve as jurors in the case. The judge may command the court clerk to summon jurors. (Article 45.027, C.C.P.) See the guide *Trial Processes* for more information on summoning prospective jurors, also called veniremen.

6. Administering the Oath to Jurors

The judge may direct the court clerk to administer the oath to *venire* persons (potential jurors) for *voir dire* (questioning of jurors under oath to determine their qualifications for jury service). (Article 35.02, C.C.P.) After six jurors are selected, the court may also direct the clerk to administer an oath to the jurors to try the case properly. (Articles 45.030 and 35.22, C.C.P.)

7. Maintaining the Docket

Article 45.017, C.C.P. requires judges to keep a docket to enter proceedings in each trial. Nine proceedings are required to be kept in the docket:

- the style and file number of each criminal action;
- the nature of the offense charged;
- the plea offered by the defendant and the date the plea was entered;
- the date the warrant, if any, was issued and the return made thereon;
- the date the examination or trial was held, and if a trial was held, whether it was by jury or by the justice or judge;
- the verdict of the jury, if any, and the date of the verdict;
- the judgment and sentence of the court, and the date each was given;
- the motion for new trial, if any, and the decision thereon; and
- whether an appeal was taken and the date of that action.

Since judges are required to keep a docket and there is no discretion as to the information required to be maintained, judges may delegate this duty to the clerk. See the study guide *Procedures before Trial* for more information on maintaining a docket.

8. Fraudulent Documents

When a court clerk has a reasonable basis to believe in good faith that a document or instrument previously filed, recorded, offered, or submitted for filing is fraudulent, the clerk shall: (1) notify in writing the aggrieved person against whom the purported judgment, act, order, directive, or oral process is rendered; or (2) if the document or instrument purports to create a lien on real or personal property, notify the aggrieved person in writing at the stated or last known address of the person named in the document. The clerk is required to provide this written notice no later than the second business day after the date that the document or instrument is offered or submitted for filing. (Section 51.901, G.C.)

The clerk is also required to post a warning sign with letters at least one inch in height that is clearly visible to the general public near the clerk's office stating:

> IT IS A CRIME TO INTENTIONALLY OR KNOWINGLY FILE A FRAUDULENT COURT DOCUMENT OR INSTRUMENT. (Section 51.904, G.C.)

E. Authority

1. Administering Oaths

Article 45.019, C.C.P., grants the power to administer the oath to a person swearing to a complaint before the municipal court. The following court officials have the authority to administer this type of oath:

- municipal judges,
- clerks of the court,
- deputy court clerks,
- city secretaries,
- city attorneys, and
- deputy city attorneys.

Section 602.002, G.C., provides authority for a municipal judge, retired municipal judge, or clerk to administer an oath in any matter pertaining to a duty of the court. Section 29.007(f), G.C., provides authority for a clerk in a home-rule municipality who is an appointed or elected clerk to administer oaths. This statute does not make any exceptions to this authority. There is not a corresponding statute for municipal court clerks in general-law cities.

2. Administering the Oath to Jurors

The judge may direct the court clerk to administer the oath to *venire* persons (potential jurors) for *voir dire* (questioning of jurors under oath to determine their qualifications for jury service). (Article 35.02, C.C.P.) After six jurors are selected, the court may also direct the clerk to administer an oath to the jurors to try the case properly. (Articles 45.030 and 35.22, C.C.P.)

3. Issuing Subpoenas

There is no discretion regarding whether to issue a subpoena. [*Edmondson v. State*, 43 Tex. 230 (1875)] A defendant has the right to have some type of compulsory process (subpoena) for obtaining witnesses. (Article 1.05, C.C.P.) Thus, a municipal court clerk must issue a subpoena if requested.

Article 24.01(d), C.C.P., states that a judge or a clerk issuing a subpoena shall sign the subpoena and indicate on it the date it was issued, but the subpoena need not be under seal.

4. Authenticating Acts

Article 45.012, C.C.P., requires municipal courts to impress a seal on all documents, except subpoenas, issued out of the court and to use the seal to authenticate the acts of the judge and clerk. This statute is a general statute and applies only to non-record municipal courts

because municipal courts of record have a specific statute, Section 30.0000125, G.C., regarding their seal. These two statutes are similar in that they both require the seal to be impressed on all documents, except subpoenas, and to authenticate the acts of the judge and clerk. The two statutes are different in that Article 45.012 does not provide for the wording of the seal, but Section 30.0000125 does contain specific wording for the municipal courts of record seal. That statute requires the following phrase to be included on the seal: "Municipal Court of/in_____, Texas." Non-record municipal courts may want to consider using the same or similar wording on their seal.

Unfortunately, neither of the two statutes provides for the appearance of the seal. Before 1999, there was a statute, Article 45.02, C.C.P., requiring the municipal court seal for both record and non-record municipal courts to contain a five-point star, but that statute was repealed. Although the courts now have no guidance on the appearance of the seal, most courts have retained the appearance that was once required by Article 45.02.

Q. 71. What is a general-law city? _____

_____

Q. 72. In a general-law city, is the municipal court clerk hired, appointed or elected? _____

_____

Q. 73. What is a home-rule city? _____

_____

Q. 74. In a home-rule city is the municipal court clerk hired, appointed or elected? _____

_____

True or False

Q. 75. City secretaries may never hold the office of court clerk. _____

Q. 76. The clerk in a home-rule city is always appointed or elected. _____

Q. 77. In a general-law city, a court clerk automatically serves for a two-year term unless the city provides by ordinance for a longer term. _____

Q. 78. In a general-law city, the city manager may fill a vacancy for the unexpired term of a court clerk's office. _____

Q. 79. Every time someone is elected, appointed, or reappointed, he or she is required to swear to an anti-bribery statement and to take an oath of office. _____

Q. 80. An elected or appointed official may perform official duties before filing the anti-bribery statement with the official records of the office. _____

End True/False

Q. 81. List the general duties of the municipal court clerk. _____

_____

_____

_____

Q. 82. Where do municipal court clerks deposit fines and fees that they collect? _____

_____

Q. 83. What information about jurors is the clerk required to keep? _____

_____

Q. 84. When can municipal court transfer a case? _____

_____

Q. 85. If a city does not have an ordinance governing the destruction of records and a clerk wants to destroy records, what must the clerk do? _____

_____

True or False

Q. 86. Both clerks and judges may establish and maintain a financial management program for the court. _____

Q. 87. Court clerks may prepare warrants but not sign them. _____

Q. 88. Only judges may grant driving safety courses, but clerks may give defendants the paperwork on court requirements for processing their cases. _____

End True/False

Q. 89. What type of records is a municipal court clerk of a court of record required to keep regarding traffic offenses? _____

_____

Q. 90. In non-record courts, who is required to keep records of traffic offenses? _____

_____

_____

Q. 91. Who is required to report convictions and bond forfeitures of traffic offenses to the Department of Public Safety? _____

_____

Q. 92. When a prospective juror files a permanent exemption with the municipal court clerk, what is the clerk required to do? _____

_____

Q. 93. When either the defense or prosecution demands a jury shuffle, what is the clerk required to do? _____

_____

Q. 94. When a defendant appeals his or her case, what is the clerk required to do? _____

_____

_____

Q. 95. What is a clerk required to do when a bond forfeiture has been declared? _____

Q. 96. What is a clerk required to do when the victim is not present when an emergency order of protection is issued? _____

Q. 97. What must a clerk or magistrate do when the magistrate suspends a concealed handgun license in an emergency protection order? _____

Q. 98. What is a clerk required to do after warrants have been executed? _____

Q. 99. Who is custodian of the funds of the court in your city? _____

Q. 100. When a defendant does not waive a jury trial, when may the clerk summon prospective jurors? _____

Q. 101. When may the clerk administer the oath to prospective jurors for *voir dire*? _____

Q. 102. What information is required to be entered on the docket? _____

Q. 103. Why may judges delegate the keeping of the docket to the clerks? _____

Q. 104. List what a clerk is required to do concerning fraudulent documents. _____

True or False

Q. 105. Court clerks, deputy court clerks, and city secretaries may administer an oath to someone swearing to a complaint. _____

Q. 106. Municipal court clerks may administer an oath in any matter in municipal court. _____

Q. 107. Judges may ask the clerk to administer the oath to the six persons chosen for a jury. _____

End True/False

Q. 108. Why do municipal court clerks have authority to issue subpoenas? _____

_____

_____

Q. 109. What wording goes on a non-record municipal court seal? _____

_____

Q. 110. What is the wording on a municipal court of record seal? _____

_____

_____

Q. 111. What is the purpose of the municipal court seal? _____

_____

_____

CONCLUSION

After reading this guide, clerks should have a clearer picture of the judicial system and their role in it. Although the judges are responsible for guiding the court, it is the clerks who manage the day-to-day operations to ensure that the ministerial and administrative duties are properly performed. Because clerks see and assist more defendants than the judges, they must understand the differences between judicial and ministerial duties so that they do not step beyond the boundaries of their authority.

Also, the clerks are a buffer between the defendants and the judges. Many defendants do not understand that the judges may not hear their side of the story unless it is at trial or unless the defendants want to plead guilty or *nolo contendere*. To help these defendants understand court procedures, clerks should be good communicators and understand court processes and procedures to be able to properly explain them to the defendants.

There are judges who do not have clerks and must perform the ministerial and administrative work of the court that clerks would ordinarily do. When a judge does not have a clerk, the judge sees all the defendants who come to the court facility. Without the buffer of a clerk, handling defendants who do not understand the ethical standards required of judges requires good communication skills. Another area of concern for judges without a clerk is the appearance of impropriety when working with the police department and the prosecutor. One of the court's administrative functions is to coordinate the peace officers' filing of tickets and the officers' trial appearances. Another function is to coordinate with the prosecutor the information needed to prosecute cases. Although these functions are necessary to the operation of the court, a judge performing them must do so very cautiously, remembering the *Code of Judicial Conduct's* requirement to abstain from the appearance of impropriety. The judge who does not have a clerk must understand the requirements of state reports because there may be financial consequences if they are not properly and timely prepared and submitted. The judge must also have knowledge of financial management in order to properly handle the money received by the court. Because there are many duties that judges may not be aware of that clerks perform, judges who are without a clerk should attend educational programs specifically designed for clerks.

GLOSSARY

Adjudicate: To determine finally; giving or pronouncing the judgment; to enter a finding of guilt or innocence.

Appeal: The process of having a higher court conduct a new trial or review either the facts and law or just questions of law from a proceeding held in a lower court. In municipal courts of record, the appellate court reviews the transcript of the trial. In municipal courts of non-record, there is a new trial in the appellate court. All defendants have a right to appeal convictions.

Appearance: The formal proceeding by which a defendant submits himself or herself to the jurisdiction of the court. Other than the defendant, only an attorney hired to represent the defendant may appear for the defendant.

Arraignment: The proceeding in which the court identifies the defendant, explains the charge and asks for a plea.

Array: Jury pool; all persons summoned for possible jury service; also called the *venire*.

Authority: The right to exercise power.

Bail: The security given by the accused that he or she will appear and answer before the proper court the accusation brought against him or her. Bail may be made by a personal or surety bond, or a cash deposit.

Branches of Government: The government is made up of three distinct divisions called branches: the legislative branch, executive branch, and judicial branch.

***Capias*:** A written order from a court directed to a peace officer commanding him or her to arrest a person accused of an offense and bring him or her before that court immediately or on a day or at a term stated in the capias.

Capias Pro Fine: Issued by a judge when a defendant is absent at the time judgment is rendered or when a defendant defaults in payment of fine. It is a written order from a court directed to a peace officer commanding him or her to arrest a person and to bring the person before the court or place him or her in jail until he or she can be brought before the court.

Charging Instrument: A complaint filed with the court charging a criminal offense; the formal accusation that a person has committed a criminal offense.

Citation: In a criminal case, it is a written notice to appear issued by a peace officer that may be used as the charging instrument in municipal court.

Civil Liability: Civil relates to private rights and remedies. A civil action can be brought to enforce, redress, or protect private rights. Being liable civilly means that a person may be held responsible for a certain act and required to pay money damages.

Complaint: The written affidavit or sworn statement that accuses a person of committing a crime. In municipal court, the complaint is the charging instrument.

Concurrent Jurisdiction: When jurisdiction is shared between courts, cases may be filed in either court.

Contiguous: Adjoining; side-by-side.

Constitutional Courts: Courts established by the Texas Constitution which include: Supreme Court, Court of Criminal Appeals, courts of appeals, district courts, county courts, and justice of the peace courts.

Continuance: The adjournment or postponement to a later date or time of a case pending in court.

Corporation Court: A municipal court.

Custodian of the Records: A custodian is anyone who has charge or custody of property or records. Municipal court clerks are responsible for the care, control, maintenance, and archival of municipal court records and, as such, are custodians of the court records.

Deferred Disposition: A process in which a judge defers imposition of the fine and grants probation requiring the defendant to adhere to certain terms. If a defendant successfully completes the terms of probation, the judge is required to dismiss the case.

Discretion: Sound, professional judgment that encompasses and reflects both equity (fairness) and experience under the law; a latitude of choices within certain legal bounds.

Docket: A formal record with brief entries required to be kept on all complaints filed in the court. Maintaining the docket is a ministerial duty that the judge may delegate to the clerk.

Empowered: Having authority to perform certain actions.

Exclusive Original Jurisdiction: When the court in which a case must be filed has sole jurisdiction (authority over), no other court has jurisdiction to hear and determine the case.

General-Law City: A city bound by state law.

Guilty: A plea by which a defendant confesses to a charged crime, or a verdict by which a defendant is convicted.

Home-Rule City: A city governed by a charter that gives the city a measure of self-government. A home-rule city is bound by its charter.

Judgment: The written declaration of the court signed by the trial judge and entered on record showing the conviction or acquittal of the defendant.

Judicial Duties: Duties that require exercise of judgment or decision on a question of law or fact or choice of alternatives. Only judges may perform judicial duties.

Jurisdiction: The legal power or authority that municipal courts have over certain types of offenses and over certain geographic locations. The power to hear and decide cases.

Jury Shuffle: When juror names are mixed to create a new order on a jury list.

Legal Authority: The right and power of judges to require obedience to their orders.

Magistrate: A judicial officer whose duty it is to preserve the peace within a certain territorial jurisdiction by use of all lawful means, to issue all process intended to aid in preventing and suppressing crime, and to cause the arrest of all offenders by lawful means in order that they may be brought to trial or, after trial, to punishment.

May: Creates discretionary authority or grants permission or a power.

Misdemeanor: An offense of a lesser degree than a felony and generally punishable by fine or imprisonment. Municipal court has jurisdiction over fine-only misdemeanors.

Ministerial Duties: Duties in which there is nothing left to discretion or is a duty imposed by law.

Municipal Court of Non-Record: A municipal court created by statute in which a city has not opted by ordinance for the court to be a record court. Hence, the trials are not recorded and appeals from the court are *de novo*, which means that the defendant gets a new trial as if a trial had not occurred in the municipal court.

Municipal Court of Record: A municipal court created by statute in which a city has opted by ordinance for the court to be a record court. Hence, the trials are recorded either by a recording devise or by a court reporter and the appeal is on a written transcript of the record to determine if any error occurred during trial.

No Contest or *Nolo Contendere*: A plea in which the defendant does not contest the charge. *Nolo contendere* has the same legal effect as a guilty plea; however, it may not be used against the defendant as an admission of guilt in a civil suit based upon or growing out of the act upon which the criminal prosecution is based.

Not Guilty: A plea in which the defendant denies guilt of the charged offense.

Oath of Office: An oath taken by officers when they assume charge of their office, whereby they declare that they will faithfully discharge the duties of the office. Appointed and elected clerks and judges are required to take an oath of office.

Ordinance: A law passed by a county or municipal lawmaking body.

Peace Bond: A type of bond required by a judge or magistrate of someone who has threatened to harm another person.

Plea: A defendant's answer to the accusation or complaint. In municipal courts, these are the possible pleas: guilty, not guilty, *nolo contendere* (no contest), not guilty by reason of insanity, or the special plea of double jeopardy.

Pre-Trial Hearing: A meeting of the defense, the prosecution, and the judge before the trial to attempt to narrow the issues to be tried, secure stipulations, or obtain rulings on motions filed before trial.

Probable Cause: Probable cause is the amount of evidence necessary to cause a person to believe someone has committed a crime. An arrest warrant, a summons, and a *capias* require probable cause before being issued. A complaint is not sufficient to issue a warrant unless it contains probable cause.

Process: A series of actions leading to the preparation of court orders, complaints and other required papers.

Processes: Written orders such as warrant, *capias, capias pro fine*, subpoenas, and summons issued by the municipal judge.

***Scire Facias*:** A special docket required by law to handle all cases and proceedings involved in the forfeiture of bail bonds.

Separation of Powers Doctrine: The constitutional requirement that the three branches of government—judicial, legislative, and executive—not encroach upon or usurp each other's powers.

Shall: Imposes a duty; not discretionary; mandatory.

Statute: A particular law enacted and established by the state legislature.

Statute of Limitations: Time limit for filing criminal charges. For all fine-only misdemeanors in Texas, a charging instrument must be filed two years from the date the offense occurred.

Statutory Courts: Courts established by the state legislature and defined by statute. Municipal courts are statutory courts.

Summons: An order from a magistrate or judge given by a peace officer commanding a person to appear in court on a stated day and time to plead to a complaint. (Note: Do not confuse this summons with a jury summons that is a notice to a prospective juror to appear for jury duty. The clerk usually prepares and mails the jury notice).

***Venire*:** The whole group of prospective jurors; the panel from which jurors are selected to hear the case; jury pool.

***Venire* Person:** A person summoned as a juror.

Verdict: The formal and unanimous decision of a jury impaneled and sworn for a trial of a case and returned in open court to the judge on the matters or question of fact submitted to the jury during the trial. The final decision of a jury in a criminal case; either the defendant is guilty or not guilty of the accusation filed.

***Voir Dire*:** This phrase means "to speak the truth" and describes questioning by the court, defense, or prosecutor about a person's qualifications as a potential juror in a case or a witness's competency during a trial.

Warrant of Arrest: A written order issued by a magistrate or judge directed to a peace officer to take a person into custody.

Writ: A written order of the court, such as *capias*, warrant of arrest, *capias pro fine*, summons, or subpoenas.

APPENDIX A
MUNICIPAL COURT JURISDICTION

	Non-Record Courts	Cite	Record Courts	Cite
City Ordinance	Territorial limits (exclusive jurisdiction)	Art. 4.14, C.C.P. Sec. 29.003, G.C.	Territorial limits (exclusive jurisdiction)	Art. 4.14, C.C.P. Sec. 29.003, G.C.
	Property owned by city in extraterritorial limits (exclusive jurisdiction)	Sec. 29.003, G.C.	Property owned in extraterritorial limits (exclusive jurisdiction)	Sec. 29.003, G.C.
	Extraterritorial limits nuisance ordinances adopted under Sec. 217.042, L.G.C. (exclusive jurisdiction)	A.G. Op. No. JC-0025	Extraterritorial limits nuisance ordinances adopted under Sec. 217.042, L.G.C. (exclusive jurisdiction)	A.G. Op. No. JC-0025
			Extraterritorial limits criminal cases arising under ordinances authorized by Secs. 215.072, 217.042, 341.903, 401.002, L.G.C.* (exclusive jurisdiction)	Sec. 30.00005, G.C.
			Concurrent civil jurisdiction with county courts to enforce nuisance abatement and junk vehicle provisions of Chapters 54 and 214 L.G.C. and Chapter 683, T.C.	Sec. 30.00005(d), G.C.
Joint Board Operating an Airport	Territorial limits Resolution, rule, or order (exclusive jurisdiction)	Sec. 29.003, G.C.	Territorial limits Resolution, rule, or order (exclusive jurisdiction)	Sec. 29.003, G.C.
	Property owned by city in extraterritorial limits (exclusive jurisdiction)	Sec. 29.003, G.C.	Property owned by city in extraterritorial limits (exclusive jurisdiction)	Sec. 29.003, G.C.
State Law	Territorial limits Fine-only offenses (concurrent jurisdiction with justice court)	Art. 4.14, C.C.P. Sec. 29.003, G.C.	Territorial limits Fine-only offenses (concurrent jurisdiction with justice court)	Art. 4.14, C.C.P. Sec. 29.003, G.C.
	Property owned by city in extraterritorial limits (concurrent jurisdiction with justice court)	Sec. 29.003, G.C.	Property owned by city in extraterritorial limits (concurrent jurisdiction with justice court)	Sec. 29.003, G.C.

*Sections 341.903 and 401.002, L.G.C. only provide authority to a home-rule municipality

Abbreviations:

C.C.P. = Code of Criminal Procedure
G.C. = Government Code
L.G.C. = Local Government Code
A.G. Op. No. = Attorney General Opinion

APPENDIX B
MUNICIPAL COURT THEFT and RELATED OFFENSES JURISDICTION

Offense	Legal Cite	Pecuniary Loss for Class C Misdemeanor Jurisdiction	Penalty (Class C misdemeanor – Sec. 12.23, P.C. – Max fine: $500)
Theft of Property	Sec. 31.03, P.C.	Less than $50	Sec. 31.03(e)(1)(A), P.C. Class C misdemeanor
Theft by Check	Sec. 31.06, P.C.	Less than $20	31.03(e)(1)(B), P.C. Class C misdemeanor
Theft of Service	Sec. 31.04, P.C.	Less than $20	Sec. 31.04(e)(1), P.C. Class C misdemeanor
Theft of Service or Credit*	Sec. 32.32, P.C	Less than $50	Sec. 32.32(c)(1), P.C. Class C misdemeanor*
Theft of Gasoline*	Sec. 31.03, P.C.	Less than $50	Sec. 31.03(e)(1), P.C. Class C misdemeanor; Art. 42.019, C.C.P. affirmative findings in judgment; and Sec. 521.349, T.C.: 2nd or subsequent offenses - automatic DL suspension or denial*
Hindering Secured Creditors	Sec. 32.33, P.C.	Less than $20	Sec. 32.33(d)(1), P.C. Class C misdemeanor
Credit Card Transaction Record Laundering	Sec. 32.35, P.C.	Less than $20	Sec. 32.35(e)(1), P.C. Class C misdemeanor
Issuance of Bad Check	Sec. 32.41, P.C.	No value amount limitation	Sec. 32.41(f), P.C. Class C misdemeanor unless check issued or passed was for child support obligation then it is a Class B misdemeanor
Misapplication of Fiduciary Property or Property of Financial Institution	Sec. 32.45, P.C.	Less than $20	Sec. 32.45(c)(1), P.C Class C misdemeanor
Securing Execution of Document by Deception	Sec. 32.46, P.C.	Less than $20	Sec. 32.46(b)(1), P.C Class C misdemeanor
Insurance Fraud	Sec. 35.02, P.C.	Less than $20	Sec. 35.02(d)(1), P.C. Class C misdemeanor
Criminal Mischief	Sec. 28.03, P.C.	Less than $50	Sec. 28.03(b)(1), P.C. Class C misdemeanor
Reckless Damage or Destruction	Sec. 28.04, P.C.	No value amount limitation	Sec. 28.04(b), P.C. Class C misdemeanor

*For offenses committed on or after September 1, 2001

APPENDIX C
WHOSE JOB IS IT?

ACTIVITY	JUDGE	CLERK	MAGISTRATE	PROSECUTOR	NON-JUDICIAL PERSONNEL
Accept complaints in municipal court	X	X			
Accept complaints – Class A & B misdemeanors & felonies			X		
Approve or dictate charges and language in complaints				X	
Administer oath to affiant swearing to complaint in municipal court	X	X		X	city secretary, city and deputy city attorney X
Administer oath to affiant swearing to complaint – Class A & B misdemeanors & felonies			X		district and county attorney X
Maintain docket	X	X			
Request pleas from defendants	X		Only on out-of-court warrants for fine-only offenses		
Accept pleas from defendants	X		Only on out-of-court warrants for fine-only offenses		
Accept fines	X		Only on out-of-court warrants for fine-only offenses		
Collect fines	X	X	Only on out-of-court warrants for fine-only offenses		X
Grant extension or time payment	X				
Plea bargain or negotiate dismissals	Approves on accepting plea			X	
Sign judgments	X				
Issue an arrest warrant	X		X		
Issue *capias* or *capias pro fine*	X				
Issue summons	X		X		
Execute warrant or *capias*					peace officer X
Execute summons					peace officer X
Review warrants or inventories	X	X			X
Set bail	X		X		peace officer under very limited circumstances X
Forfeit bail	X				

WHOSE JOB IS IT? (continued)

ACTIVITY	JUDGE	CLERK	MAGISTRATE	PROSECUTOR	NON-JUDICIAL PERSONNEL
Remit bail	X				
Hear evidence	X				
Rule on law or facts	X				
Prepare trial calendar	X	X			
Control sequence of trial calendars	X	X			
Summon jurors		X			peace officer X
Grant continuances	X			May agree or oppose before the court	
Grant or deny motions	X				
Determine witnesses to be subpoenaed or called				X	defendant has the same rights
Issue subpoenas	X	X			
Serve subpoenas					peace officer, person older than 18 yrs & not party to proceeding X
Dismiss cases	Only in certain instances X			Requires consent of judge X	
Prepare state reports	X	X			X
Determine office policy	X	X			X
Explain procedures to defendants	X	X		X	
Prepare appeal for transcription to appellate court	X	X			
Train employees	X	X			X
Grant a driving safety course	X				
Grant deferred disposition	X				
Give legal advice					attorney representing defendant X
Prepare court budget	X	X			X
Prepare court budget	X	X			X
Issue peace bonds			X		
Determine probable cause	X		X		
Conduct inquests			Conducted by the justice of the peace		
Issue emergency mental commitments			X		
Give magistrate warnings to arrested persons			X		
Issue emergency protection orders			X		

ANSWERS TO QUESTIONS

PART 1

Q. 1. What document divides the powers of state government?

The Texas Constitution

Q. 2. What is the separation of powers doctrine?

The government is divided into three branches—executive, legislative, and judicial—and no person in any of the three branches may exercise the authority attached to any other branch except where expressly permitted by the Constitution.

Q. 3. Name the three branches of city government.

The three branches of city government are the legislative branch that is the city council; the executive branch that includes the city manager, all administrative departments and the police department; and the judicial branch that is the municipal court.

Q. 4. Does the city council have authority to set fines for the judge?

No (The city council does, however, have authority to adopt ordinances and create penalties for violating the ordinances.)

Q. 5. List the courts established by the Texas Constitution.

The following courts are constitutional courts because they were established by the Texas Constitution: Supreme Court, Court of Criminal Appeals, the courts of appeals, the district courts, the county courts, and the justice of the peace courts.

Q. 6. What kind of courts are municipal courts?

Municipal courts are statutory courts because they are created by the Texas Legislature.

Q. 7. When is a municipal court created in a municipality?

A municipal court is created when a municipality is incorporated.

PART 2

Q. 8. Define the term jurisdiction.

Jurisdiction is authority and legal power to hear and decide cases.

PART 3

Q. 9. Since municipal courts have criminal jurisdiction, what type of offenses are violations of city ordinances?

Criminal offenses.

Q. 10. When a defendant posts a bond with the municipal court and fails to appear, does the municipal court have jurisdiction to forfeit the bond?

Yes

Q. 11. What kind of cases must be initiated in municipal court and not in any other court?

Violations of city ordinance and violations of rules, resolutions, and orders of a joint airport board.

Q. 12. What type of jurisdiction does municipal court have over rules, resolutions, and orders of a joint airport board?

Municipal court has exclusive original jurisdiction.

Q. 13. With which courts does municipal court share jurisdiction?

Municipal court shares jurisdiction with the justice of the peace courts and county and district courts in limited cases in municipal courts of record.

Q. 14. Over what type of offenses does municipal court share jurisdiction?

Municipal court has concurrent jurisdiction with the justice of the peace court of a precinct in which the municipality is located in all criminal cases arising under state law that arise within the territorial limits of the city and property owned by the city in the city's extraterritorial limits; and are punishable by fine-only and such sanctions, if any, as authorized by statute not consisting of confinement in jail or imprisonment. Municipal courts of record also share jurisdiction with county and district courts over the enforcement of dangerous structures and junked vehicle ordinances.

Q. 15. What is the geographic jurisdiction of the municipal court?

The geographic jurisdiction of the municipal court includes the territorial limits of the city and property owned by the city within the city's extraterritorial limits. Municipal courts of record also have jurisdiction over certain ordinances within the city's extraterritorial jurisdiction.

Q. 16. What is a municipal court of record's jurisdiction over city ordinance nuisance violations?

A municipal court of record has jurisdiction over nuisance violations in the city's territorial limits and its extraterritorial limits.

Q. 17. When a city owns a park outside its extraterritorial limits, what is municipal court's jurisdiction to hear cases charging fine-only offenses committed in the park?

Municipal court does not have any jurisdiction over those offenses because the offenses occur outside of municipal court's extraterritorial geographic jurisdiction.

Q. 18. What are the penalty limits of offenses over which municipal courts have jurisdiction?

Municipal courts have jurisdiction over any offense that is punishable by a penalty of a fine only and other sanctions, if any, which is authorized by statute and does not consist of confinement in jail or imprisonment. Municipal courts have jurisdiction over any offense regardless of the amount of fine penalty as long as no confinement is included as a sanction. The Penal Code in Section

12.41 calls all fine-only offenses outside of the Penal Code Class C misdemeanors.

Q. 19. Why does municipal court have jurisdiction to hear cases where a conviction may result in the Department of Public Safety suspending a defendant's driver's license?

Article 4.14, C.C.P., and Section 29.003, G.C., provide that municipal court has jurisdiction over fine-only offenses that do not include confinement and provides that a sanction, such as a denial, suspension, or revocation of a privilege, does not affect the original jurisdiction of the municipal court, by an agency or entity other than the court.

Q. 20. Give an example of an offense that upon conviction requires a sanction in addition to paying a fine.

Answers for this question may vary, but one example of an offense that has a sanction in addition to the fine is the offense of possession of alcohol by a minor that requires upon conviction that the defendant take an alcohol awareness course and complete community service hours.

Q. 21. What is the maximum amount of a fine for a Class C misdemeanor offense in the Penal Code?

$500.

Q. 22. What is the maximum penalty that a city council can establish for ordinance offenses involving public health and fire safety violations?

A fine not to exceed $2,000.

Q. 23. What is municipal court's theft jurisdiction?

- *Theft of property of a value less than $50 is a Class C misdemeanor. (Section 31.04, P.C.);*
- *Theft of property of a value less than $20 if the defendant obtained the property by issuing or passing a check or sight order and the person did not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders then outstanding is a Class C misdemeanor. (Section 31.03, P.C.);*
- *Theft of services of a value less than $20 is a Class C misdemeanor. (Section 31.04, P.C.); and*
- *Theft of service or credit by intentionally or knowingly making a false or misleading written statement to obtain property or credit for himself or another is a Class C misdemeanor if the value of the property or the amount of the credit is less than $50. (Section 32.32, P.C.)*

Q. 24. When does municipal court have jurisdiction over a person who has committed a crime?

When a complaint or citation is filed with the court.

Q. 25. When a person is issued a citation for a fine-only offense and appears in court before the officer has filed the citation with the court, does the court have jurisdiction to request and accept a plea from the person?

No, because there are no charges filed by a complaint or by a citation. The filing of the complaint or citation initiates the case and gives municipal court jurisdiction.

Q. 26. What is the statute of limitations for filing a complaint in municipal court?

Two years from the date of the commission of the offense.

PART 4

Q. 27. When can a mayor in a general-law city also be the municipal judge?

In a general-law city, the mayor is the ex-officio judge of the municipal court. The mayor continues as municipal judge during his or her term as mayor unless the municipality, by ordinance, authorizes the election of a judge or provides for the appointment and qualifications of a judge by ordinance.

Q. 28. What governs the selection of municipal judges in a home-rule municipality.

The city's charter.

Q. 29. What must a general-law city do when a municipal judge is temporarily unable to act?

If a municipal judge of a general-law city is temporarily unable to act, the governing body may appoint one or more persons meeting the qualifications for the position to sit for the regular municipal judge. The appointee has all powers and duties of the office and is entitled to compensation.

Q. 30. What is a question of law?

A question of law is an issue involving application or interpretation of a law.

Q. 31. What is a question of fact?

A question of fact is an issue involving resolution of a factual dispute.

Q. 32. What is judicial discretion?

Judicial discretion is the exercise of judicial judgment. Judges' discretion to make decisions must be guided by law and be based on facts and is the power to determine what, under existing circumstances, is right or proper.

Q. 33. When does a judge not have discretion to perform an action?

When a law prescribes a certain way to perform a certain action, the judge has no discretion.

Q. 34. Which kind of duty can a judge delegate to a court clerk?

Judges can delegate a ministerial duty to the clerk.

Q. 35. Judges cannot delegate judicial duties to a court clerk.

True

Q. 36. Clerks may set and take bail from a defendant.

False

Q. 37. When a defendant comes to the court clerk's office, the clerk may ask the defendant how he or she wants to plea.

False

Q. 38. When a defendant calls the court to request that the clerk reset his or her case to another trial date, the clerk may grant the continuance and reset the case.

False

Q. 39. Clerks may not conduct trials.

True

Q. 40. Clerks may set penalties.

False

Q. 41. Clerks may grant extensions and time payment plans to defendants.

False

Q. 42. Clerks may require a defendant to pay a fine by performing community service.

False

Q. 43. The judge has the authority to waive the fine and costs only after the defendant defaults on payment and is indigent and is unable to perform community service.

True

Q. 44. Clerks may not issue arrest warrants.

True

Q. 45. Municipal court clerks have the authority to issue a *capias*.

False

Q. 46. Only a judge may issue a summons.

True

Q. 47. If a judge is not available, the clerk may grant deferred disposition or teen court.

False

Q. 48. Judge can permit clerks to perform judicial duties and then later adopt the actions of the clerk.

False

Q. 49. Municipal court clerks may stamp the judge's signature on court documents when the judge is on vacation.

False

Q. 50. When a judge is only in the office part-time, the clerk may use the judge's signature stamp to sign judgments on cases in which a defendant pays a fine at the clerk's office.

False

Q. 51. Municipal court clerks may stamp the judge's signature on mental health commitments if the judge is not available and it is an emergency.

False

Q. 52. Municipal court clerks cannot be held liable for performing a judicial duty if the judge requires the clerk to perform the duty.

False

Q. 53. Municipal judges are also magistrates.

True

Q. 54. Municipal judges may perform a duty that a magistrate has the authority to perform.

True

Q. 55. Municipal judges may issue emergency protection orders for an offense involving family violence.

True

Q. 56. Only justices of the peace may conduct peace bond hearings.

False

Q. 57. Municipal judges may accept a complaint (probable cause affidavit) for a felony.

True

Q. 58. Municipal court clerks may give magistrate warnings after a defendant is arrested if the municipal judge is not available.

False

Q. 59. Municipal judges acting as magistrates may issue search warrants.

True

Q. 60. Only justices of the peace may conduct license suspension hearings.

False

Q. 61. Judges may delegate ministerial duties to clerks.

True

Q. 62. Usually, clerks are responsible for establishing and maintaining a financial management program for the court.

True

Q. 63. Although presiding judges have authority to administer the oath to someone swearing to a complaint, associate judges do not.

False

Q. 64. A municipal judge can dismiss a case filed by a citation if the peace officer asks for the dismissal.

False (Only a prosecutor can request a case be dismissed.)

Q. 65. When defendants present proof that they renewed an expired driver's licenses, the clerk may dismiss the case.

False

Q. 66. Clerks may dismiss cases in which defendants renew an expired inspection certificate.

False

Q. 67. Clerks may dismiss an offense for failure to maintain financial responsibility if the judge is on vacation.

False

Q. 68. A municipal judge can declare a city ordinance unconstitutional.

True

Q. 69. What power does a judge have to exercise control in the courtroom?

Contempt power.

Q. 70. Who can sit for a municipal judge who is disqualified or must recuse himself or herself?

When a municipal judge is disqualified or recused, only a judge with authority to try cases in that court may sit for the presiding judge. Section 29.012, G.C., provides that a judge from another municipal court located in an adjacent municipality may sit for that judge. A municipal judge may not sit in a case for another judge if either party objects in writing before the first pre-trial hearing or trial over which the judge is to preside. (Section 29.012, G.C.) If there is no adjacent municipality or if there is an adjacent municipality but there is an objection to that judge sitting on the case, the city must appoint an alternate judge to hear the case.

PART 5

Q. 71. What is a general-law city?

A general-law city does not have a charter and is, therefore, governed by the general laws of the state.

Q. 72. In a general-law city, is the municipal court clerk hired, appointed, or elected?

In general-law cities, the municipal court clerk may be either appointed or elected.

Q. 73. What is a home-rule city?

A home-rule city is one that has a charter that governs it.

Q. 74. In a home-rule city is the municipal court clerk hired, appointed or elected?

In home-rule cities the municipal court clerk may be hired, appointed or elected.

Q. 75. City secretaries may never hold the office of court clerk.

False

Q. 76. The clerk in a home-rule city is always appointed or elected.

False

Q. 77. In a general-law city, a court clerk automatically serves for a two-year term unless the city provides by ordinance for a longer term.

True

Q. 78. In a general-law city, the city manager may fill a vacancy for the unexpired term of a court clerk's office.

False

Q. 79. Every time someone is elected, appointed, or reappointed, he or she is required to swear to an anti-bribery statement and to take an oath of office.

True

Q. 80. An elected or appointed official may perform official duties before filing the anti-bribery statement with the official records of the office.

False

Q. 81. List the general duties of the municipal court clerk.

The general duties of the municipal court clerk are:

- *keep minutes of the court proceedings;*
- *issue (prepare) process; and*
- *generally perform the duties for the municipal court that a county clerk performs for a county court.*

Q. 82. Where do municipal court clerks deposit fines and fees that they collect?

Municipal court clerks deposit fines and fees into the municipal treasury.

Q. 83. What information about jurors is the clerk required to keep?

Municipal court clerks are required to show who has served on municipal juries and the length of service of each juror.

Q. 84. When can municipal court transfer a case?

A transfer of a case is generally not applicable to municipal courts except when transferring a juvenile to the juvenile court for lack of jurisdiction because of two prior convictions for non-traffic offenses, or when a change of venue for a person allowed to participate in a teen court program has been granted. See the study guide Juveniles for more information on these transfers.

Q. 85. If a city does not have an ordinance governing the destruction of records and the clerk wants to destroy records, what must the court clerk do?

The clerk must get permission from the State Library to destroy the records.

Q. 86. Both clerks and judges may establish and maintain a financial management program for the court.

True

Q. 87. Court clerks may prepare warrants but not sign them.

True

Q. 88. Only judges may grant driving safety courses, but clerks may give defendants the paperwork on court requirements for processing their cases.

True

Q. 89. What type of records is a municipal court clerk of a court of record required to keep regarding traffic offenses?

Municipal court clerks of courts of records are required to keep a record of each case in which a person is charged with a violation of law regulating the operation of vehicles on highways.

Q. 90. In non-record courts, who is required to keep records of traffic offenses?

In non-record courts, judges and magistrates are required to keep records of traffic offenses. (Note: Keeping these types of records is a ministerial duty that judges may delegate to the clerk.)

Q. 91. Who is required to report convictions and bond forfeitures of traffic offenses to the Department of Public Safety?

Municipal court clerks, judges, and magistrates are required to report convictions and bond forfeitures of traffic offense to the Department of Public Safety.

Q. 92. When a prospective juror files a permanent exemption with the municipal court clerk, what is the clerk required to do?

The clerk is required to deliver a copy of the permanent exemption to the county tax assessor/collector.

Q. 93. When either the defense or prosecution demands a jury shuffle, what is the clerk required to do?

The clerk is required to randomly select jurors by computer or another process of random selection and shall write or print the names in the order selected on the jury list. The clerk shall deliver a copy of the list to the prosecutor and to the defendant or his or her attorney.

Q. 94. When a defendant appeals his or her case, what is the clerk required to do?

The clerk has a mandatory ministerial duty to forward the appeal to the appellate court.

Q. 95. What is a clerk required to do when a bond forfeiture has been declared?

When a forfeiture has been declared, the court (judge) or clerk shall docket the case upon the scire facias (a special docket for bond forfeiture) or upon the civil docket.

Q. 96. What is a clerk required to do when the victim is not present when an emergency order of protection is issued?

The clerk is required to send a copy of the order to the victim.

Q. 97. What must a clerk or magistrate do when the magistrate suspends a concealed handgun license in an emergency protection order?

The clerk or judge must immediately notify the Texas Department of Public Safety.

Q. 98. What is a clerk required to do after warrants have been executed?

Keep a copy of the warrants and supporting affidavits on file for public viewing.

Q. 99. Who is custodian of the funds of the court in your city?

Answer may vary from city to city.

Q. 100. When a defendant does not waive a jury trial, when may the clerk summon prospective jurors?

A clerk may summons prospective jurors when the judge issues a writ commanding the clerk to summon a list of citizens from which six qualified persons shall be selected.

Q. 101. When may the clerk administer the oath to prospective jurors for voir dire?

The clerk may administer the oath to prospective juror for voir dire when directed to do so by the judge.

Q. 102. What information is required to be entered on the docket?

- *the style and file number of each criminal action;*
- *the nature of the offense charged;*
- *the plea offered by the defendant and the date the plea was entered;*
- *the date the warrant, if any, was issued and the return made thereon;*
- *the date the examination of trial was held, and if a trial was held, whether it was by jury or by the justice or judge;*
- *the verdict of the jury, if any, and the date of the verdict;*
- *the judgment and sentence of the court, and the date each was given;*
- *the motion for new trial, if any, and the decision thereon; and*
- *whether an appeal was taken and the date of that action.*

Q. 103. Why may judges delegate the keeping of the docket to the clerks?

Since judges are required to keep a docket and there is no discretion as to the information required to be maintained, judges may delegate this duty to the clerk.

Q. 104. List what a clerk is required to do concerning fraudulent documents.

A municipal court clerk is required to notify in writing the aggrieved person against whom the purported judgment, act, order, directive, or oral process is rendered. If the document or instrument purports to create a lien on real or personal property, the clerk is required to notify in writing the person named in the document at his or her stated or last known address. The clerk is required to provide this written notice not later than the second business day after the date that the document or instrument is offered or submitted for filing. The clerk is also required to post a warning sign with letters at least one inch in height that is clearly visible to the general public near the clerk's office stating: IT IS A CRIME TO INTENTIONALLY OR KNOWINGLY FILE A FRAUDULENT COURT DOCUMENT OR INSTRUMENT.

Q. 105. Court clerks, deputy court clerks, and city secretaries may administer an oath to someone swearing to a complaint.

True

Q. 106. Municipal court clerks may administer an oath in any matter in municipal court.

True

Q. 107. Judges may ask the clerk to administer the oath to the six persons chosen for a jury.

True

Q. 108. Why do municipal court clerks have authority to issue subpoenas?

Municipal court clerks have the authority to issue subpoenas because there is no discretion in issuing a subpoena. Defendants have a right to some type of compulsory process compelling the attendance of witnesses at a trial.

Q. 109. What wording goes on a non-record municipal court seal?

The statute requiring the seal does not provide the wording of the seal.

Q. 110. What is the wording on a municipal court of record seal?

"Municipal Court of/in _____, Texas."

Q. 111. What is the purpose of the municipal court seal?

The purpose of the court seal is to authenticate the acts of the judge and clerk.

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MAGISTRATES ORDER OF EMERGENCY PROTECTION

Presented by

John Vasquez
Municipal Court Judge
City of Austin

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

1. Identify recent legislative amendments effecting domestic violence.
2. Prepare a magistrate's protective order.
3. Provide a magisterial warning to a person charged with a domestic violence offense.

Emergency Protective Orders in a Nutshell

A Magistrate's Guide to Conducting an EPO Hearing

Emergency Protective Orders

- Step 1
- A defendant is charged with family violence or stalking and taken into custody.

Assault Family Violence or Stalking

- Step 2
- Review the probable cause affidavit and approve if appropriate.

Emergency Protective Orders

- Step 3
- Review the motion for EPO to determine whether it is complete. If not, request additional information.

Emergency Protective Orders

- Step 4
- If no motion for EPO was filed, review the probable cause affidavit and any available information to determine whether an EPO should be considered on the Magistrate's own motion.

Emergency Protective Orders

- Step 5
- If the magistrate has sufficient information, prepare a draft EPO for possible issuance

Emergency Protective Orders

- Step 6
- When the defendant is brought before the magistrate, advise the defendant of his/her legal rights, the nature of the pending charge and set bond

Emergency Protective Orders

- Step 7
- Advise the defendant that a motion for EPO has been filed and explain the nature and purpose of an EPO

Emergency Protective Orders

- Step 8
- Inform the defendant about the factual basis for the motion for the EPO

Emergency Protective Orders

- Step 9
- After again warning the defendant about his/her right to remain silent, ask the defendant if he/she wants to respond to the motion for EPO

Emergency Protective Orders

- Step 10
- If the defendant responds, focus the inquiry on whether there was physical violence and the nature of the violence.

The Nature and Purpose of an EPO

- Step 11
- Decide whether to grant the motion and, if ordered, the particular matters to be included in the EPO

Emergency Protective Orders

- Step 12
- If the EPO is granted, have a copy delivered to the defendant in court and ask the defendant to acknowledge receipt
- or

Emergency Protective Orders

- Step 12 (a)
- If the motion for EPO is denied, make a notion on the motion of the denial

Emergency Protective Orders

- EPO's are
  - Extraordinary remedies
  - Not for resolving property orchild custody issues
  - A tool for reducing family violence

A Practical Guide To Issuing an Emergency Protective Order

Who may request an Emergency Protective Order ("EPO")?

a peace officer
the alleged victim
an attorney for the state
the guardian of the alleged victim/s,
or the magistrate (on his/her own motion).

What information should be included in the Motion for EPO?

physical description of defendant including: name, date of birth, race/ethnicity, gender, height, weight, eye color, hair color, etc

name and date of birth of the protected person

relevant addresses, including the home, business, employment address of the alleged victim, the address of any schools and/or daycare facilities that the suspect may be ordered to remain away from.

a description of the alleged contact supporting the motion. The date of the assault, the conduct of the suspect during the assault, and the injuries sustained by the alleged victim should be particularly described.

What should the magistrate consider when deciding whether or not to issue an EPO?

An EPO is an extraordinary remedy issued by a magistrate, who reasonably believes that a suspect may commit future acts of violence or engage in threatening conduct unless ordered to refrain from such contact. The violence alleged in the probable cause affidavit, the defendants criminal history, any threats made by the defendant against the alleged victim, and the explanation offered by the defendant, if any, should be considered by the magistrate

Do I have **to hold a hearing before granting or denying a Motion for EPO?**

The statute granting magistrates the authority to issue EPO's does not specifically describe the form of the hearing to be conducted by the magistrate. In fact, the law does not even specifically require a hearing.

Even so, denying a "liberty" interest without a hearing may violate the "due course of laws" provisions of the Texas Constitution.

But, if the defendant is under arrest for an offense involving Family Violence and either serious bodily injury or the use or exhibition of a deadly weapon, Texas *law* requires that the magistrate *shall* issue an EPO. See Tex. Code of Crim. Proc. art. 17.292 (2000).

What are the consequences if a suspect violates an EPO?

If the Defendant violates the EPO, the Defendant can be charged with Violation of Protective Order in addition to any other charge that be alleged against the suspect based upon the conduct of the suspect. For example, if the suspect were to assault a person protected by the EPO, the suspect could be charged with assault and violation of protective order.

Violation of a protective order is a Class "A" misdemeanor punishable by a fine of up to $4,000.00 and/or up to 1 year in jail.

What statutes are most relevant to a magistrate considering a Motion for EPO?

Tex. Code Crim. Proc. art. 17.291 (2000)

Art. 17.291.† Further detention of certain persons

(a) In this article:

(1) "family violence" has the meaning assigned to that phrase by Section 71.O1(b)(2), Family Code; and

(2) "magistrate" has the meaning assigned to it by Article 2.09 of this code, as amended by Chapters 25, 79, 916, and 1068, Acts of the 71st Legislature, Regular Session, 1989.

(b) Article 17.29 does not apply when a person has been arrested or held without a warrant In the prevention of family violence if there is probable cause to believe the violence will continue if the person is immediately released. The head of the agency arresting or holding such a person may hold the person for a period of not more than four hours after bond has been posted. This detention period may be extended for an additional period not to exceed 48 hours, but only if authorized in a writing directed to the person having custody of the detained person by a magistrate who concludes that

(1) the violence would continue if the person is released; and

(2) if the additional period exceeds 24 hours, probable cause exists to believe that the person committed the instant offense and that, during the 10-year period preceding the date of the instant offense, the person has been arrested:

(A) on more than one occasion for an offense involving family violence, or

(B) for any other offense, if a deadly weapon, as defined by Section 107, Penal Code, was used or exhibited during commission of the offense or during immediate flight afte commission of the offense.

Tex. Code Crim. Proc. art. 17.292 (2000)

Art. 17.292.† Magistrate's Order for Emergency Protection

(a) At a defendants appearance before a magistrate after arrest for an offense involving family violence or an offense under Section 42.072, Penal Code, the magistrate may issue an order for emergency protection on the magistrate's own motion or on the request of:

(1) the victim of the offense;

(2) the guardian of the victim;

(3) a peace officer; or

(4) the attorney representing the state.

(b) At a defendant's appearance before a magistrate after arrest for an offense involving family violence, the magistrate shall issue an order for emergency protection if the arrest is for an offense that also involves:

(1) serious bodily injury to the victim; or

(2) the use or exhibition of a deadly weapon during the commission of an assault.

(c) The magistrate in the order for emergency protection may prohibit the arrested party from.

(1) committing:

(A) family violence or an assault on the person protected under the order, or

(B) an act in furtherance of an offense under Section 42.072, Penal Code;

(2) communicating:

(A) directly with a member of the family or household or with the person protected under the order in a threatening or harassing manner; or

(B) a threat through any person to a member of the family or household or to the person protected under the order;

(3) going to or near:

(A) the residence, place of employment, or business of a member of the family or household or of the person protected under the order; or

(B) the residence, child care facility, or school where a child protected under the order resides or attends.; or

(4) possessing a firearm, unless the person is a peace officer, as defined by section 1 07, Penal Code, actively engaged in employment as a sworn, full-time paid employee *of a* state agency or political subdivision.

(d) The victim of the offense need not be 'present in court when the order for emergency protection is issued.

(e) In the order for emergency protection the magistrate shall specifically describe the prohibited locations and the minimum distances, if any, that the party must maintain, unless the magistrate determines for the safety of the person or persons protected by the order that specific descriptions of the locations should be omitted.

(f) To the extent that a condition imposed by an order for emergency protection issued under this article conflicts with an existing court order granting possession of or access to a child, the condition imposed under this article prevails for the duration of the order for emergency protection.

(g) An order for emergency protection issued under this article must contain the following statements printed in bold-face type or in capital letters:

'A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A HNE OF AS MUCH AS $4,000 OR BY CONHNEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH AN ACT THAT RESULTS IN FAMILY VIOLENCE OR A STALKING OFFENSE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS THE POSSESSION OF A FIREARM BY A PERSON, OTHER THAN A PEACE OFFICER. AS DESCRIBED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO THIS

ORDER MAY BE PROSECUTED AS A SEPARATE OFFENSE PUNISHABLE BY CONHNEMENT OR IMPRISONMENT.

"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."

(h) The magistrate issuing an order for emergency protection under this article shall send a copy of the order to the chief of police in the municipality where the member of the family or household or individual protected by the order resides, if the person resides in a municipality, or to the sheriff of the county where the person resides, if the person does not reside in a municipality. If the victim of the offense is not present when the order is issued, the magistrate issuing the order shall order an appropriate peace officer to make a good faith effort to notify, within 24 hours, the victim that the order has been issued b\ calling the victims residence and place of employment. The clerk of the court shall send a copy of the order to the victim

(i) If an order for emergency protection issued under this article prohibits a person from going to or near a child care facility or school, the magistrate shall send a copy of the order to the child care facility or school.

(j) An order for emergency protection issued under this article is effective on issuance, and the defendant shall be served a copy of the order in open court. An order for emergency protection issued under this article remains in effect up to the 61st das but not less than 31 days after the date of issuance.

(k) To ensure that an officer responding to a call is aware of the existence and terms of an order for emergency protection issued under this article, each municipal police department and sheriff shall establish a procedure within the department or office to provide adequate information or access to information for peace officers of the names of persons protected by an order for emergency protection issued under this article and of persons to whom the order is directed. The police department or sheriff may enter an order for emergency protection issued under this article in the department's or office's record of outstanding warrants as notice that the order has been issued and is in effect.

(l) In the order for emergency protection, the magistrate may suspend a license to carry a concealed handgun issued under Section 411 177, Government Code, that is held by the defendant.

(m) In this article:

(1) "Family,' "family violence," and "household" have the meanings assigned by Chapter 71, Family Code.

(2) "Firearm" has the meaning assigned by Chapter 46, Penal Code.

Tex. Code Crim. Proc. Art. 17.293 (2000)

Art. 17.293.† Delivery of Order for Emergency Protection to Other Persons

The magistrate or the clerk of the magistrate's court issuing an order for emergency protection under Article 17.292 that suspends a license to carry a concealed handgun shall immediately send a copy of the order to the appropriate division of the Department of Public Safety at its Austin headquarters. On receipt of the order suspending the license, the department shall

(1) record the suspension of the license in the records of the department;

(2) report the suspension to local law enforcement agencies, as appropriate; and

(3) demand surrender of the suspended license from the license holder

Tex. Fam. Code § 71.0021 (2001)

§ 71.0021. † Dating Violence.

(a) "Dating violence" means an act by an individual that is against another individual with whom that person has or has had a dating relationship and that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the individual in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself.

(b) For purposes of this title, "dating relationship" means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration *of:* (1) length of the relationship: (2) nature of the relationship; (3) the frequency and type of interaction between the persons involved in the relationship.

(c) A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a "dating relationship" under subsection (b).

Tex. Fam. Code § 71.003 (2000)

§ 71.003. † Family

'Family" includes individuals related by consanguinity or affinity, as determined under Sections 573.022 and 573.024, Government Code, individuals who are former spouses of each other, individuals who are the biological parents of the same child, without regard to marriage, and a foster child and foster parent, without regard to whether those individuals reside together.

Tex. Fam. Code § 71.004 (2000)

§ 71.004. † Family Violence

'Family violence' means:

(1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;

(2) abuse, as that term is defined by Sections 261.OU1(1)(C), (E), and (G) by a member of a family or household toward a child of the family or household,

(3) dating violence, as the at tem is defined by Section 71.0021.

Tex. Fam. Code § 71.005 (2000)

§ 71.005. † Household

"Household' means a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other.

Tex. Fam. Code § 71.006 (2000)

§ 71.006. Member of a Household

"Member of a household" includes a person who previously lived in a household.

Tex. Penal Code § 1.07 (2000)

§ 1.07. † Definitions

(a) In this code:

(17) "Deadly weapon means:

(A) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or

(B) anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

(46) "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Tex. Penal Code § 46.01 (2000)

§ 46.01.1 Definitions

In this chapter:

(3) "Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. Firearm does not include a firearm that may have, as an integral part, a folding knife blade or other characteristics of weapons made illegal by this chapter and that is.

(A) an antique or curio firearm manufactured before 1899; or
(B) a replica of an antique or curio firearm manufactured before 1899, but only if the replica does not use nm fire or center fire ammunition.

Where can I get more information about how to help victims of family violence?

If you would like more information about the victims of family violence and resources that might be available to help victims, please contact:

The Women's Advocacy Project, Inc.
PO Box 833
Austin, Texas 78767

Tel. (512) 206-3987
Fax (512) 476-5773

Prohibition against possession of a firearm by a person subject to an EPO

Texas Penal Code Sec. 46.04 (amended 2001)

Sec. 46.04. UNLAWFUL POSSESSION OF FIREARM [~~BY FELON~~]. (a) A person who has been convicted of a felony commits an offense if he possesses a firearm:

(1) after conviction and before the fifth anniversary of the person's release from confinement following conviction of the felony or the person's release from supervision under community supervision, parole, or mandatory supervision, whichever date is later; or

(2) after the period described by Subdivision (1), at any location other than the premises at which the person lives.

(b) A person who has been convicted of an offense under Section 22.01, punishable as a Class A misdemeanor and involving a member of the person's family or household, commits an offense if the person possesses a firearm before the fifth anniversary of the later of:

(1) the date of the person's release from confinement following conviction of the misdemeanor; or

(2) the date of the persons release from community supervision following conviction of the misdemeanor.

(c) A person other than a peace officer, as defined by Section 1.07, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to an order issued under Section 6.504 or Chapter 85, Family Code, under Article 17.292, Code of Criminal Procedure, or by another jurisdiction as provided by Chapter 88, Family Code, commits an offense if the person possesses a firearm after receiving notice of the order and before expiration of the order.

(d) In this section, "family," 'household,' and "member of a household" have the meanings assigned by Chapter 71, Family Code.

(e) An offense under Subsection (a) [~~this section~~] is a felony of the third degree. An offense under Subsection (b) or (c) is a Class A misdemeanor.

FUNDED BY A GRANT FROM THE
TEXAS COURT OF CRIMINAL APPEALS

TEXAS MUNICIPAL COURTS EDUCATION CENTER

1609 SHOAL CREEK BOULEVARD, SUITE 302 AUSTIN, TEXAS 78701
TELEPHONE (512) 320-8274
1-800-252-3718
FAX (512) 320-0996

CONTEMPT

Presented by

Robert Barfield
Municipal Judge
Pasadena

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

1. Identify and distinguish between criminal and civil contempt.
2. Identify and distinguish between direct and indirect contempt.
3. Describe the different types of proceedings necessary under the various types of contempt.
4. Identify and use the correct process in the event that it becomes necessary to use contempt powers.

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FAX (512) 435-6118

JUDGMENT, INDIGENCE & ENFORCEMENT

Presented by

Ryan Kellus Turner
General Counsel
Texas Municipal Courts Education Center
Austin

Chapter 45 of the Code of Criminal Procedure contains specific provisions to secure the collection and enforcement of judgments in municipal court. The law also provides individuals who lack the financial resources to pay a monetary fine. By the end of the session, participants will be able to:

1. Describe the history of enforcing local trial court judgments in Texas;
2. Identify collection and enforcement mechanisms in Chapter 45 of the Code of Criminal Procedures;
3. Identify factors for consideration in determining whether a defendant has "insufficient resources or income to pay a fine or costs;"
4. Locate key provision pertaining to community service;
5. Distinguish a capias pro fine from other warrants;
6. Identify the procedural steps and statutory determinations that must be made before a defendant may be committed to jail; and,
7. Identify the limitation of enforcement imposed by the U.S. Supreme Court in Tate v. Short and Bearden v. Georgia.

Indigence and Enforcement

Pre and Post Test

Ryan Kellus Turner
Program Attorney & Deputy Counsel
Texas Municipal Courts Education Center

1. From a legal enforcement perspective, what action by the court signifies the defendant's legal obligation to pay a fine and comply with any other orders of the court?

A. Entering of a plea of guilty or nolo contendere by the defendant
B. The pronouncement or rendering of guilt by the court
C. Notation in the court's docket
D. Signing of a written judgment

Notes:

2. **True or False:** Texas law contains procedures and definitions for determining if a defendant is "indigent."

1. True 2. False

Notes:

3. Article 45.041, Code of Criminal Procedure, states that the judge may direct the defendant to pay (A) the entire fine and costs when the sentence is pronounced (B) the entire fine and costs at some later date, or (C) a specified portion of the fine and costs at designated intervals.

Without determining indigency, does the law allow the court to enter a judgment ordering the defendant to pay the fine and costs when the sentence is pronounced or be committed to jail on a capias pro fine?

1. Yes 2. No

Notes:

4. Article 45.041, Code of Criminal Procedure, states that the judge may direct the defendant, if applicable, to make restitution to any victim in an amount not to exceed $500.

Assuming that restitution is made a condition of probation (via deferred disposition). The defendant is also ordered to make "installment payments" so that at the end of the probation period the court will have the entire special expense fee it is entitled to collect. In the event that the defendant claims to be unable to make either an installment payment or a restitution payment, may the court revoke the probation and issue a capias pro fine without determining whether the defendant made a sufficient bona fide effort to pay?

1. Yes 2. No

Notes:

5. Which United Supreme Court case held that no defendant may jailed on the basis of his or her inability to pay without first being allowed an alternative means of discharging the fine and costs?

A. Tate v. Short
B. Bearden v. Georgia
C. Ex parte Tate
D. Ex parte Minjares
E. Ex parte Hannington

Notes:

6. According to the United States Supreme Court, does a defendant's poverty in any way immunize him or her from punishment?

1. Yes 2. No

Notes:

7. Does Texas statutory law authorize a defendant to "lay out" his or her fine and costs?

1. Yes 2. No

Notes:



Indigence and Enforcement
Pre Test
Ryan Kellus Turner
Program Attorney & Deputy Counsel
Texas Municipal Courts Education Center



1. From a legal enforcement perspective, what action by the court signifies the defendant's legal obligation to pay a fine and comply with any other orders of the court?



0 • A. Entering of a plea of guilty or nolo contendere by the defendant
0 • B. The pronouncement or rendering of guilt by the court
0 • C. Notation in the court's docket
0 • D. Signing of a written judgment



0 of 5

2. True or False: Texas law contains procedures and definitions for determining if a defendant is "indigent."



0 • 1. True
0 • 2. False



0 of 5

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0 of 5

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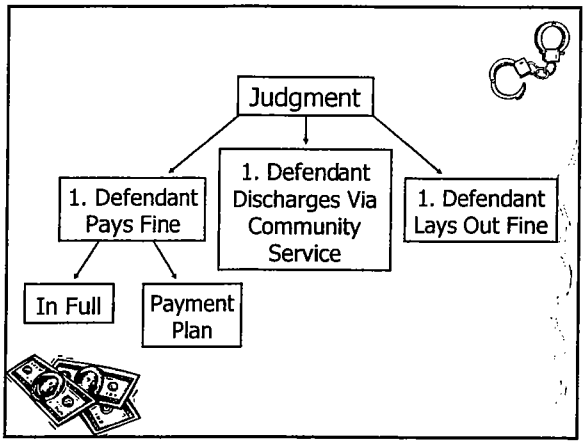
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Overview

I. Judgments

II. Indigence and Related Issues

III. Enforcement Mechanisms for Defendants who Default on Judgment



I. Judgments and Jail Credit Judgments (Art. 45.041, C.C.P.)

-"judgment' and "sentence" = fine and costs
-Manner of payment
-Restitution
-Other sanction authorized by law
-Jail credit
-Rendered in open court
-Don't forget about the general rule



II. Indigence and Related Issues

A. History to the Present
   -1890 to 1971
   -Tate v. Short (U.S. S. Ct. 1971)
   -Ex parte Tate (Tex. Crim App. 1971)
   -Bearden v. Ga. (U.S. S. Ct. 1971)
B. Payment
   -Time Payment Fee



C. Community Service
   -1982 - 1993 "as a reasonable condition" of deferred
   -Article 45.049 C.CP., "insufficient resources or income to pay fine and costs" (1993)
   -New Art. 43.091, C.C.P. Waiver of Payment & Costs "Laying Out" Fines
D. "Laying Out" Fines
   -Non-statutory
   -Documentation



When Can You Consider the Financial Resources of the Defendant?

-Prior to discharge of fine/costs via community service (C.C.P., Sec. 45.049 = "insufficient resources")
Juvenile Exception: Sec. 729.003(f), Trans. Code

-Prior to commitment on a capias pro fine (Sec. 45.046, C.C.P. = "defendant is not indigent" and Sec. 45.048 = "too poor to pay the fine and costs")



III. Enforcement Mechanisms for Defendants who Default in Judgment

A. Capias Pro Fine & Commitment (Secs. 45.045-046, C.C.P.)
B. Civil Collection - Justice or judge may order fine and costs collected by execution against defendant's property in same manner as in a civil suit (Sec. 45.047, C.C.P.)
C. Contempt – Sec. 21.002(b), Gov. Code



Post-Conviction Jail Credit 45.045 - Capias Pro Fine

-Commitment determinations must be made per 45.046.
-Commitment must be at not less than the rate set out in 45.048.
-Under Ex Parte Minjares, if more than one cpf is issued, the presumption is that misdemeanants will be committed and earn cumulative, consecutive, "stacked" credit



Comparing Jail Credits

Pre-Conviction - 45.041(c)

-Credit defendant for time spent in jail

-As provided in 42.03(2)(a) "per cause"

-At the rate set out in 45.048:

-$100 for each period of time served, as specified by the court in the judgment of the case."

-"Court may specify period not less than 8 or more than 24 hours

-Even if it's "double credit." Hannington

Post-Conviction 45.045 – Capias Pro Fine

-Commitment determinations must be made per 45.046.

-Commitment must be at not less than the rate set out in 45.048.

-Under Ex Parte Minjares, if more than one cpf is issued, the presumption is that misdemeanants will be committed and earn cumulative, consecutive, "stacked" credit.

Commitment Orders – JC-0393 (2001)

-If already confined when the court orders confinement to enforce the discharge on a second conviction, the law presumes concurrent credit, unless the court specifies otherwise (Articles 42.08 and 43.03(b)) C.C.P.)

-If the misdemeanant is not already confined, follow Minjares (consecutive credit)

-If fines or costs are discharged consecutively, the court's order must indicate that the confinements will run consecutively. (citing Article 42.08(a))

Commitment Orders - JC-0393 (2001)

Citing Banks v. State, 708 S.W.2d 460, 461 (Tex.Crim.App. 1986), the court's order also should contain five elements, adapted to the circumstances of a confinement to enforce a default:

1. The prior conviction's trial court number;
2. The correct name of the court where the prior conviction was taken;
3. The prior conviction's date;
4. The prior conviction's term; and
5. The prior conviction's nature.



Post Test



1. From a legal enforcement perspective what action by the court signifies the defendant's legal obligation to pay a fine and comply with any other orders of the court?

- A. Entering of a plea of guilty or nolo contendere by the defendant
- B. The pronouncement or rendering of guilt by the court
- C. Notation in the court's docket
- D. Signing of a written judgment



0 of 5

2. True or False: Texas law contains procedures and definitions for determining if a defendant is "indigent."

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0 of 5

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0 of 5

4. Article 45.041, Code of Criminal Procedure, states that the judge may direct the defendant, if applicable, to make restitution to any victim in an amount not to exceed $500.

Assuming that restitution is made a condition of probation (via deferred disposition). The defendant is also ordered to make "installment payments" so that at the end of the probation period the court will have the entire special expense fee it is entitled to collect. In the event that the defendant claims to be unable to make either an installment payment or a restitution payment, may the court revoke the probation and issue a capias pro fine without determining whether the defendant made a sufficient bona fide effort to pay?

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0 of 5

5. Which United Supreme Court case held that no defendant may jailed on the basis of his or her inability to pay without first being allowed an alternative means of discharging the fine and costs?

0 • A. Tate v. Short
0 • B. Bearden v. Georgia
0 • C. Ex parte Tate
0 • D. Ex parte Minjares
0 • E. Ex parte Hannington

0 of 5

6. According to the United States Supreme Court, does a defendant's poverty in any way immunize him or her from punishment?

0 • 1. Yes
0 • 2. No



0 of 5

7.Does Texas statutory law authorize a defendant to "lay out" his or her fine and costs?

0 • 1. Yes
0 • 2. No



0 of 5

Final Questions:

Answers will be kept anonymous.

Prior to today have you ever engaged in the practice known as "pay or lay"?

0 • 1. Yes
0 • 2. No



0 of 5

Do you have personal knowledge of any judges engaging in "pay or lay"?

0 • 1. Yes
0 • 2. No



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Any Questions?
THE END



CHAPTER 3

JUDGMENTS, INDIGENCE, AND ENFORCEMENT

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CHAPTER 3

JUDGMENTS, INDIGENCE, AND ENFORCEMENT

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CHAPTER 3
JUDGMENTS, INDIGENCE, AND ENFORCEMENT

Critical to the task of ensuring due process of law while judicially enforcing the law is an understanding of judgments, indigence, and the methods of enforcement available to the court. This task requires members of the municipal judiciary to be familiar with both statutory and case law.

I. Judgments and Jail Credits

Judgment (Article 45.041, Code of Criminal Procedure)

(a) The judgment and sentence, in case of conviction in a criminal action before a justice of the peace or municipal court judge, shall be that the defendant pay the amount of the fine and costs to the state.

(b) The justice or judge may direct the defendant:

(1) to pay:

(A) the entire fine and costs when sentence is pronounced;

(B) the entire fine and costs at some later date; or

(C) a specified portion of the fine and costs at designated intervals;

(2) if applicable, to make restitution to any victim of the offense in an amount not to exceed $500; and

(3) to satisfy any other sanction authorized by law.

(c) The justice or judge shall credit the defendant for time served in jail as provided by Article 42.03. The credit shall be applied to the amount of the fine and costs at the rate provided by Article 45.048.

(d) All judgments, sentences, and final orders of the justice or judge shall be rendered in open court.

Article 45.041 of the Code of Criminal Procedure[1] is the beginning focal point of analysis. In examining and applying the statute, the following fundamental questions arise.

[1] Unless specified otherwise, all references are to the Texas Code of Criminal Procedure.

A. What is a Judgment?

While Chapter 45 contains a specific statute addressing judgments in municipal court, it does not provide a definition of the term. Accordingly, we look outside Chapter 45 to the general provisions of the Code.[2]

> Article 42.01 provides that:
>
> A judgment is the written declaration of the court signed by the trial judge and entered of record showing the conviction or acquittal of the defendant. The sentence served shall be based on the information contained in the judgment.

B. Is the "Judgment" the Same as the "Sentence"?

While the language of Article 42.01 suggests that the "judgment" is the formal determination of guilt or innocence and that the "sentence" is the consequence or penalty derived from the finding of guilt in the judgment, case law can make the terms in the context of municipal court seem problematic.

In *Ex parte Hayden*,[3] the Court of Criminal Appeals held that judgment and sentence are not the same thing, though in a misdemeanor case, a verdict of guilty is itself a judgment of conviction and no formal sentence is required. Thirty years later, the dissent in *Ex parte Minjares*[4] claimed that the majority left the impression that there was no difference in the two terms.

What the dissent in *Minjares* did not note, however, was that *Hayden* was addressing the concepts of judgment and sentence in a different context (namely, whether non-courts of record had probation authority and whether a final judgment was required). *Minjares*, in contrast, dealt with the issues of jail credit and indigence.

Thus, while the two terms are not synonymous, Article 45.041 does little to delineate the difference. In fact, the terms are used collectively.

C. Both Articles 45.041 and 42.01 make reference to conviction. Can a defendant be convicted in municipal court if he or she neither appears in court nor responds by mail in a timely manner?

No. Defendants may not be found guilty in *absentia*. The defendant must be allowed an opportunity to enter a plea in person, by mail, or by an attorney. Otherwise, no one has the right to deny a person charged with an offense his or her day in court by

---

[2] Article 45.002, Code of Criminal Procedure.
[3] 215 S.W.2d 620 (Tex. Crim. App. 1948).
[4] 582 S.W.2d 105 (Tex. Crim. App. 1978).

entering a plea for him or her.[5] A criminal court may never enter a "default judgment" of guilt. The right for the defendant to be present is largely based on the Confrontation Clause of the 6th Amendment and general notions of due process.[6]

D. What should a Judgment Contain?

While Article 45.041 of the Code provides the specifics of what a judgment in municipal court can contain, Article 42.01, Section 1 states that the judgment should contain additional information. The following list is edited to reflect what should also be contained in a municipal court judgment:

- The title and number of the case;
- That the case was called and the parties appeared, naming the attorney for the state, the defendant, and the attorney for the defendant, or where a defendant is not represented by counsel, that the defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel;
- The plea or pleas of the defendant to the offense charged;
- Whether the case was tried before a jury or a jury was waived;
- The submission of the evidence, if any;
- In cases tried before a jury that the jury was charged by the court;
- The verdict or verdicts of the jury or the finding or findings of the court;
- In the event of a conviction that the defendant is adjudged guilty of the offense as found by the verdict of the jury or the finding of the court, and that the defendant be punished in accordance with the jury's verdict or the court's finding as to the proper punishment;
- In the event of conviction, that the defendant pay a fine;
- In the event of acquittal, that the defendant be discharged;
- The county and court in which the case was tried, and if there was a change of venue in the case, the name of the county in which the prosecution was originated;

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[5] *Ex parte Super,* 175 S.W. 697 (Tex.Crim.App. 1915); *Cramer v. State,* 109 S.W.2d 1054 (Tex. Crim. App. 1937); Attorney General Opinion No. O-5693 1943).
[6] *U.S. v. Gagnon,* 470 U.S. 522 (1985); *Ex parte Mines,* 26 S.W.3d 910 (Tex.Crim.App. 2000).

- The offense or offenses for which the defendant was convicted;
- The date of the offense or offenses and degree of offense for which the defendant was convicted;
- The date judgment is entered;
- The date sentence is imposed; and
- The terms of any plea bargain.

E. Who Prepares the Judgment?

Article 42.01, Section 2 provides:

> *The judge may order the prosecuting attorney, or the attorney or attorneys representing any defendant, or the court clerk under the supervision of an attorney, to prepare the judgment, or the court may prepare the same.*

F. Are Judgments Required in Municipal Court?

Yes. The Code states in Article 42.01, Section 3 that the provisions apply to both felony and misdemeanor cases. Incomplete or defective judgments in municipal court can result in commitment orders being set aside.[7]

G. What is a "Finding of Fact"?

A finding of fact is a determination made by the court based on the evidence of the case.

H. Are Municipal Courts Required to Make Findings of Fact?

Occasionally, statutory law requires a finding of fact. The three most common examples are:

- Finding of family violence/assault - Article 42.01, Section 5 provides that in addition to the information listed above, the judgment should reflect affirmative findings entered pursuant to Article 42.013. Article 42.013 addresses findings of family violence and thus could be applicable to municipal court convictions for assault.[8]

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[7] *Ex parte Leachman,* 199 S.W.2d 661 (Tex. Crim. App. 1947).
[8] Section 22.01, Penal Code.

- Finding of bias or prejudice/criminal mischief - Additionally, Article 42.01, Section 6 provides that in addition to the information listed above, the judgment should reflect affirmative findings entered pursuant to Article 42.014. Article 42.014 addresses a finding that the offense was committed because of bias or prejudice. The statute includes the offense of criminal mischief that can be a Class C misdemeanor.[9]

- Finding of theft of motor fuel - Article 42.019 requires an affirmative finding of fact if a defendant is convicted of theft of motor fuel.[10]

I. Does the Defendant Have to Pay All of the Fine and Costs at Once?

Paralleling the general rule of Article 42.15, Article 45.041 authorizes the municipal judge, through the judgment and sentence to order the defendant to pay the amount of the fine and costs of the state. Specifically, Article 45.041 provides that the judge may direct that the defendant pay in one of three ways:

1. Entire fine and costs immediately;

2. Entire fine and costs at later date; or

3. Specified portion of the fine and costs at intervals.

Note, however, while the judgment provisions contained in the Code of Criminal Procedure authorize the court to order the defendant to "pay the fine and costs immediately," the U.S. Supreme Court has held that a state cannot impose a fine as a sentence and then automatically convert it into a jail term solely because the defendant is indigent and cannot pay the fine in full.[11] As noted in Chapter 1 of this publication the granting of one extension or time payments is a judicial function and may not be assigned to the clerk or other non–judicial personnel.

J. What about Restitution?

A municipal judge may direct the defendant, if applicable, to make restitution to any victim of the offense in an amount not to exceed $500.[12]

In contrast to a fine, restitution is money used to repay the victim of the offense.[13] In the event that the court orders restitution to be paid to the victim, a statement of the

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[9] Section 28.03, Penal Code.
[10] Section 31.03, Penal Code.
[11] *Bearden v. Georgia,* 461 U.S. 380 (1983).
[12] Article 45.041(b)(3), Code of Criminal Procedure.
[13] See generally, Article 42.037, Code of Criminal Procedure.

amount of restitution ordered should be included in the judgment.[14] A restitution order in the judgment should include either:

1. The name of the victim and the permanent mailing address of the victim at the time of the judgment; or

2. If the court determines that the inclusion of the victim's name and address in the judgment is not in the best interest of the victim, the name and address of a person or agency that will accept and forward restitution payments to the victim.

For a more complete discussion on restitution, see Chapter 2 in this publication.

K. What does "Other Sanction Authorized by Law" Mean?

This open-ended phrase refers to any other consequences authorized by law that do not involve incarceration. For example, community service and one alcohol awareness course as requested in minor alcohol convictions.

L. How do You Determine "Credit for Time Served in Jail"?

Calculating pre-judgment jail credit requires the judge to apply three separate Code provisions. Article 45.041(c) requires that the "justice or judge shall credit the defendant for time served in jail as provided by Article 42.03. The credit shall be applied to the amount of the fine and costs at the rate provided by Article 45.048."

While Article 45.041 mandates that the municipal judge credit the defendant for time in jail, Article 42.03 provides the statutory authorization for such credit.

Article 42.03 – Pronouncing Sentence; Time; Credit for Time Spent in Jail Between Arrest and Sentence or Pending Appeal

Sec. 2. (a) In all criminal cases the judge of the court in which the defendant was convicted shall give the defendant credit on his sentence for the time that the defendant has spent in jail in said cause, other than confinement served as a condition of community supervision, from the time of his arrest and confinement until his sentence by the trial court.

Note that Article 42.03:

1. Applies to all criminal cases;

2. Mandates that jail credit be given when defendants are incarcerated prior to judgment;

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[14] Article 42.01, Section 1, (25), Code of Criminal Procedure.

3. Requires that the defendant be subject to confinement in jail (regardless if in county or municipal facilities); and

4. Requires credit to be given for time spent in jail "in said cause:"

   - In *Hannington v. State*, the Court of Criminal Appeals clarified the phrase "in said cause," by requiring that credit be given for all time in jail prior to sentence in each cause even when the effect is that defendant receive "double credit."[15]

   - The practical effect of *Hannington* in municipal court is that if a defendant is arrested on multiple warrants, the court is obligated to give the defendant credit for time spent in jail on each and every warrant.

While Article 42.03 mandates that credit be given, Article 45.041 directs that it be earned at a rate consistent with Article 45.048.

Article 45.048 – Discharged from Jail

(a) A defendant placed in jail on account of failure to pay the fine and costs shall be discharged on habeas corpus by showing that the defendant:

(1) is too poor to pay the fine and costs; or

(2) has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of not less than $50 for each period of time served, as specified by the convicting court in the judgment in the case.

(b) A convicting court may specify a period of time that is not less than eight hours or more than 24 hours as the period for which a defendant who fails to pay the fines and costs in the case must remain in jail to satisfy $50 of the fine and costs.

Note:

1. In lieu of a fixed credit (*i.e.*, "$50 for each day or part of a day"), the Legislature, effective September 1, 2001, amended the law to authorize a variable credit (*i.e.*, the judge determines the credit within certain parameters).

2. Under Article 45.048, the defendant must spend at least eight hours in jail before being entitled to **any** jail credit. (There is no language expressly authorizing the court to give the defendant prorated jail credit.)

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[15] 832 S.W.2d 355 (Tex. Crim. App. 1992).

3. Presumably, under Article 45.048, once the defendant has spent more than eight hours in jail, the court, at its discretion, may give in excess of $50.

4. At a minimum, a defendant who has spent 24 hours in jail is entitled to $50 credit. (Remember, if it is accrued prejudgment, the jail credit is applied "per cause," concurrently, even if it results in the defendant earning "double credit.")

5. The court may specify the interval at which the defendant accrues jail credit pursuant to the guidelines stated above.

6. The determination of jail credit must be specified in the judgment of the case. (Thus, effective September 1, 2001, municipal court judgments are required to contain additional information not listed in either Article 45.041 or Article 42.01.)

M. For the Purpose of Rendering a Judgment, Sentence, or Order, What is "Open Court"?

While the Texas Constitution (Article I, Section 13) provides that all courts "shall be open," no case or statute expressly defines what "open court" means in the context of Article 45.041. Presumably, the law means, at a minimum, that the judgment, sentence, or order must not be made in secret and that the court's authority must be utilized in a manner consistent with public accountability and the defendant's fundamental due process rights.

II. Indigence and Related Issues

A. History to the Present

From as early as 1890 until 1971, individuals convicted in municipal court that had insufficient resources to pay their fines or court costs were forced into labor or incarcerated:

> *When a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine, if he is unable to pay the fine and costs adjudged against him, he may for such time as will satisfy the judgment be put to work in the workhouse, or on the county farm, or public improvements of the county, as provided in the succeeding Article, or if there be no such workhouse, farm or improvements, he shall be imprisoned in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against him... .*[16]

[16] Article 793, Code of Criminal Procedure. [Repealed.]

While the Court of Criminal Appeals upheld the constitutionality of labor or prison for the poor, it ruled that the amount of jail credit earned could not be based merely on the population of the county.[17]

In 1969, Preston Tate was committed to the prison farm of the City of Houston by virtue of a *capias pro fine* from six traffic convictions with aggregate fines totaling $425. The Court of Criminal Appeals, in overruling Tate's contention, held that Tate's status as an indigent did not render him immune from criminal prosecution and that imprisonment was not unconstitutional merely because Tate was too poor to pay his traffic fines.[18]

The U.S. Supreme Court, however, disagreed. In reversing the Court of Criminal Appeals, it held that the Equal Protection Clause of the 14th Amendment prohibits states from imposing a fine as sentence and automatically converting it to a jail term solely because the defendant is indigent and cannot pay the fine in full.[19]

Tate v. Short remains a milestone, not only in Texas, but also in American jurisprudence. By the time the case was remanded to the Court of Criminal Appeals, the Texas Legislature had already revised the judgment provision of the Code of Criminal Procedure to permit courts to order payments be made immediately, late, or in intervals. As a result of *Tate*, courts are now required to take into consideration the defendant's economic resources and income.[20] Overruling a long line of case law under *Tate*, indigent defendants may not be jailed without first allowing the defendant an alternative means of discharging the fine.

B. Payment

Ideally, upon entering the judgment, a defendant will pay the court in the manner specified by the judgment (*i.e.*, immediately, later, or in intervals).[21] In the event that a payment plan is requested or deemed necessary, the court should inform the defendant that in the event any part of the fine, court costs, or restitution is unpaid come the 31st day after the judgment, a $25 time payment fee will be assessed per conviction.[22] Note, a defendant need not be deemed indigent by the court in order to receive a payment plan.

For further discussion on the interplay between indigence and due process, see Chapter 4 of this publication.

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[17] *Ex parte Ferguson,* 132 S.W.2d 408 (Tex. Crim. App. 1939).
[18] *Ex parte Tate,* 445 S.W.2d 210 (Tex. Crim. App. 1969).
[19] *Tate v. Short,* 401 U.S. 395 (1971); Ryan Kellus Turner "Pay or Lay: *Tate v. Short* Revisited." Municipal Court Recorder, Vol. 12, No. 3 (March 2003).
[20] *Ex parte Tate,* 471 S.W.2d 404 (Tex. Crim. App. 1971).
[21] Article 45.041, Code of Criminal Procedure.
[22] Section 51.921, Government Code.

C. Community Service

While the Texas Attorney General opined that community service could be ordered as a reasonable condition of deferred disposition in 1988,[23] community service was not added as a way for indigent defendants to discharge their fines until 1993.

Article 45.049 - Community Service in Satisfaction of Fine or Costs

(a) A justice or judge may require a defendant who fails to pay a previously assessed fine or costs, or who is determined by the court to have insufficient resources or income to pay a fine or costs, to discharge all or part of the fine or costs by performing community service. A defendant may discharge an obligation to perform community service under this article by paying at any time the fine and costs assessed.

(b) In the justice's or judge's order requiring a defendant to participate in community service work under this article, the justice or judge must specify the number of hours the defendant is required to work.

(c) The justice or judge may order the defendant to perform community service work under this article only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community. A governmental entity or nonprofit organization that accepts a defendant under this article to perform community service must agree to supervise the defendant in the performance of the defendant's work and report on the defendant's work to the justice or judge who ordered the community service.

(d) A justice or judge may not order a defendant to perform more than 16 hours per week of community service under this article unless the justice or judge determines that requiring the defendant to work additional hours does not work a hardship on the defendant or the defendant's dependents.

(e) A defendant is considered to have discharged not less than $50 of fines or costs for each eight hours of community service performed under this article.

(f) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, justice of the peace, municipal court judge, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with manual labor performed by a defendant under this article if the act or failure to act:

(1) was performed pursuant to court order; and

(2) was not intentional, willfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

[23] See, Attorney General Opinion No. JM-898 (1988).

Note the following about Article 45.049:

1. It requires the court to make an official determination of insufficient resources for those who upon pronouncement of judgment cannot pay.

2. The statute also applies to previous assessed fines and costs.

3. The defendant may discharge **all** or **part** of the amount owed through community service.

4. The court must specify the number of hours to be worked.

5. It restricts for whom the community service may be performed.

6. It requires the community service provider to supervise the defendant and report back to the court.

7. It places a general limitation on the number of hours that can be ordered per week.

8. It provides general limited immunity to governmental personnel.

Generally, with the exception of indigent defendants, community service cannot be performed in lieu of paying a fine. Additionally, courts should be aware that community service may be performed in lieu of paying court costs.

For additional information on conducting an indigent hearing, see TMCEC *Bench Book.*

In 2001, the Legislature recognized that municipal courts sometimes encounter situations where the performance of community service may create an undue hardship on the defendant. The new provisions allow the court to—in specific circumstances—waive the collection of the fine and state court cost.

Article 43.091 - Waiver of Payment of Fines and Costs for Indigent Defendants in Justice or Municipal Court

A municipal court, regardless of whether the court is a court of record, or a justice court may waive payment of a fine or cost imposed on a defendant who defaults in payment if the court determines that:

(1) the defendant is indigent; and

(2) each alternative method of discharging the fine or cost under Article 43.09 would impose an undue hardship on the defendant.

Note the following about Article 43.091:

1. For this provision to be applicable, the defendant must first **default** in the payment of the fine and costs.

2. For reasons unknown, the Legislature placed this provision, that only applies to municipal and justice courts, outside of Chapter 45.

3. While the statute refers to Article 43.09, courts should interpret this provision carefully in light of the prohibition of incarcerating indigent defendants provided in *Tate* [See also, Article 43.03(d)]. While Article 43.09(h) is essentially the same as 45.049, judges are discouraged from applying Article 43.09(a). There is authority suggesting that Article 43.09 does not apply to municipal or justice courts.[24]

D. "Laying Out" Fines

Municipal judges and key personnel should be prepared on occasion for convicted defendants to request "laying out" their fines and costs. To "lay out" one's fines and costs means that the defendant wishes to be sent to jail until the balance of the amount owed is fully discharged by jail credit. It is of paramount importance, that judges be aware that this is not a sentencing option authorized by the modern Code of Criminal Procedure but rather an option that **may only be utilized at the request of the defendant** and with the permission of the court. (Historically, it is worth noting that the 1925 Code of Criminal Procedure authorized the "laying out" of fines and it was recognized as a statutory option as late as 1939).[25]

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[24] See, Attorney General Opinion No. MW-386 (1981) citing *Ex parte Young,* 136 S.W.2d 863 (Tex. Crim. App. 1940), holding that the specific enactment, recodified as Article 45.048, prevails over the general rule stated in Article 43.09.

[25] See, Attorney General Opinion No. O-1563 (1939).

Because municipal court jurisdiction does not entail criminal cases punishable by confinement or imprisonment, municipal judges must be particularly careful to not allow defendants to "lay out" their fines in a manner which resembles sentencing the defendant to jail. Critical to this distinction is that the defendant's motion to "lay out" the fine and costs is tantamount to a request from the defendant that the court find the defendant in default and allow the defendant to discharge the balance owed through jail credit (*i.e.*, the defendant is essentially sending him or herself to jail with the permission of the court).

Note, there is no statutory authority that requires a municipal judge to grant a request to "lay out" fines. Some judges view "laying out" as an easy way out for lazy defendants that unfairly imposes additional expense on the city or county. Other judges, however, find the practice of "laying out" the fine agreeable because it saves the court time, energy, and human resources that are more than likely going to be used in committing the defendant to jail on a *capias pro fine* at some future point in time (*i.e.*, if the defendant is determined to go to jail, the court can either let him go now or send him to jail after he defaults).

Because of the irregular nature of "laying out" a fine and cost, it is strongly recommended that the judge document that the defendant is not being committed against his or her will. In essence, a motion to "lay out" a fine and costs in jail should include at a minimum that the defendant understands and attests that he or she:

1. May request that the court grant an extension of time to pay, a payment plan, or community service in lieu of payment;

2. Does not want an extension to pay, a payment plan, or community service instead of paying the fine and costs;

3. May ask the court to consider his or her financial situation to decide if he or she is indigent (*i.e.*, financially unable to pay);

4. Cannot be jailed to pay the fine and costs if determined to be indigent;

5. Does not claim to be indigent and does not want a indigent hearing;

6. Was at least 17 years old or older at the time of the offense;

7. Is of sound mind and freely requests the court to commit the defendant to jail immediately;

8. Is aware that if the request is granted, he or she will be given jail credit at not less than eight hours or more than 24 hours as the period in jail to satisfy $100 of the fines and costs; and

9. Is aware that the judge will determine the rate at which the defendant earns jail credit.

The court should provide the defendant with a copy of the motion and read the entire motion aloud. Prior to allowing the defendant to sign the motion and present it to the court, the judge should be convinced that the defendant understands its entire contents. The motion should be made in open court and preferably in the presence of others. The motion, if granted, should be signed by the judge and retained with the judgment.

> See TMCEC Forms Book, Motion to Lay Out Fine in Jail.

III. Enforcement Mechanisms for Defendants who Default in Judgment

A. *Capias Pro Fine*

Unlike county and district trial courts, municipal courts do not sentence defendants to jail upon conviction. Rather, they sentence them to pay fines and possibly other sanctions. It would be misleading, however, to think that municipal court never send convicted defendants to jail. While the two proceeding sentences may seem contradictory, they are not.

What distinguishes jail-bound municipal court defendants from those in county and district courts is that their trip to jail is not a part of the sentence but rather a result of the defendant's failure to comply with the terms of the judgment of the court (*e.g.*, paying a fine and court costs, taking a driving safety course, attending counseling, *etc.*).

A *capias pro fine* (Latin for "that you take for the fine") is a specialized warrant issued post-judgment for convicted defendants who intentionally fail to discharge the judgment. In addition to Article 45.048, previously detailed, Chapter 45 contains two provisions pertinent to understanding and applying this enforcement mechanism.

Article 45.045(a) - *Capias Pro Fine*

If the defendant is not in custody when the judgment is rendered or if the defendant fails to satisfy the judgment according to its terms, the court may order a *capias pro fine* issued for the defendant's arrest. The *capias pro fine* shall state the amount of the judgment and sentence, and command the appropriate peace officer to bring the defendant before the court or place the defendant in jail until the defendant can be brought before the court.

Note the following about Article 45.045(a):

1. While the judgment provisions contained in the Code of Criminal Procedure authorize the court to order the defendant to "pay the fine and costs immediately," the U.S. Supreme Court has held that a state cannot impose a fine as a sentence and

then automatically convert it into a jail term solely because the defendant is indigent and cannot pay the fine in full.[26] Alas, barring an official determination that the defendant is not indigent, a court may order that the defendant be arrested but may not leave the defendant committed to jail on a *capias pro fine*.

2. On two instances, the Court of Criminal Appeals has held that failure to comply with the requirements of Article 45.045 have resulted in defendants being released on *habeas corpus*:

   - *Ex parte Palvado* – Capias pro fine was defective because it was not signed by the judge, amount of fine was not shown, and it was not returned until four days after it was returnable.[27]

   - *Ex parte Winford* – Docket suggesting filing of a complaint, issuance of a warrant, and a plea of guilty are no substitute for a final judgment and are insufficient to authorize imprisonment on a *capias pro fine*.[28]

3. A *capias pro fine* is not a commitment order. Preference is given to the defendant being brought immediately before the court. While the law authorizes the defendant to be temporarily placed in jail, the defendant may only be kept there until the defendant can be brought before the court. At such time, a formal commitment order may be prepared. (See *TMCEC Forms Book, Order of Commitment*).

4. Other notable Court of Criminal Appeals opinions pertaining to *capias pro fines*:

   - *Ex parte Smith* – Unreasonable, arbitrary, and discriminatory ordinances violating the Texas and U.S. Constitution may not be validly enforced by means of a *capias pro fine*.[29]

   - *Ex parte Watson* - Ordinances preempted by state law may not be enforced by means of a *capias pro fine*.[30]

   - *Ex parte Smith* - A *capias pro fine* cannot be issued prior to either a complaint or a warrant and subsequently a valid judgment.[31]

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27 129 S.W.2d 306 (Tex. Crim. App. 1939).
28 85 S.W. 1146 (Tex. Crim. App. 1905).
29 211 S.W.2d 204 (Tex. Crim. App. 1948).
30 225 S.W.2d 850 (Tex. Crim. App. 1949).
31 265 S.W. 170 (Tex. Crim. App. 1924).

- *Ex parte Jonishkies* – A defective complaint can invalidate a subsequent *capias pro fine*.[32]

- *Ex parte Bozeman* – An unsworn complaint cannot be the basis of either a judgment or a subsequent *capias pro fine*.[33]

- *Ex parte Ambrose* – A *capias pro fine* cannot be issued by a judge who is an injured party to an alleged crime.[34]

Article 45.046 – Commitment

(a) When a judgment and sentence have been entered against a defendant and the defendant defaults in the discharge of the judgment, the judge may order the defendant confined in jail until discharged by law if the judge determines that:

(1) the defendant intentionally failed to make a good faith effort to discharge the judgment; or

(2) the defendant is not indigent.

(b) A certified copy of the judgment, sentence, and order is sufficient to authorize such confinement.

Note the following about Article 45.046:

1. Prior to commitment, a judgment and sentence must be entered against the defendant.

2. The defendant must default in the discharge of the judgment prior to being committed to jail.

3. The decision to commit the defendant to jail is within the discretion of the judge.

4. Prior to commitment, the judge must affirmatively find that the defendant failed to make a good faith effort to discharge the judgment.

    - Presumably, this provision could apply to indigent defendants who have been given an alternative means of discharging their fines and costs (through installment payments or community service) and who have nonetheless defaulted.

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[32] 227 S.W. 952 (Tex. Crim. App. 1921).
[33] 270 S.W. 2d 300 (Tex. Crim. App. 1958).
[34] 24 S.W. 291 (Tex. Crim. App. 1893).

- Tate fundamentally stands for the proposition that indigent people cannot be incarcerated without being given an alternative means of paying the fine and cost. Tate should not be misconstrued "as precluding imprisonment as an enforcement method when alternative means are unsuccessful."[35]

- In accordance with Tate, an indigent determination must be made prior to commitment.

- A "certified copy" presumably means signed and bearing the court's seal.

1. Post-Judgment Jail Credits

After the defendant has been convicted and has defaulted in complying with the terms of the judgment, the judge has more discretion in how jail credits may be earned.

In contrast to pre-judgment credit which must be calculated "per cause," concurrently, (*i.e.*, the defendant who spends at least 24 hours in jail is entitled to $50 credit for **each** warrant he or she is arrested on), defendants committed to jail on a *capias pro fine* are presumed to earn such credit consecutively (*i.e.*, each warrant and fine amount is "stacked"). Consequently, the defendant earns only one jail credit per day.

In explaining why defendants post-judgment are not automatically entitled to concurrent jail credit, the Court of Criminal Appeals explained:

Were we to hold that that the fines assessed by a municipal judge may run concurrently, a defendant such as petitioner would have a means of avoiding the satisfaction of many judgments by discharging the largest of the fines assessed against him. We decline to so hold.[36]

2. Compare and Contrast: Pre-judgment vs. Post-judgment Jail Credit

Example — Pre-judgment:

Defendant is arrested on five warrants. He spends 25 hours in jail. The fine and costs for each offense is $200. The defendant owes $1,000 (five warrants x $200). The judge must give concurrent credit on each cause at the same time, even if it results in "double credit."[37]

Accordingly, the defendant is entitled to a minimum $250 credit for time served (five warrants x $50).

Example — Post-judgment:

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[35] *Tate v. Short,* 401 U.S. 395 (1971).
[36] *Ex parte Minjares,* 582 S.W.2d 105 (Tex. Crim. App. 1978).
[37] See generally, *Hannington v. State,* 832 S.W.2d 355 (Tex. Crim. App. 1992).

Defendant is arrested on five warrants. He only spends seven hours in jail before seeing the judge. The judge takes a plea. The defendant pleads guilty, and requests to pay the fine and costs in installments. In the judgment, the judge assesses the defendant's fines, including courts costs and fees, at $1,000. Since he did not serve at least eight hours, the defendant is not statutorily entitled to any jail credit. The defendant is released. Three months later the defendant has not paid a dime. The judge issues a *capias pro fine*. The defendant is arrested and immediately brought before the judge. The judge ascertains that the defendant is not indigent and failed to make a good faith effort to comply with the judgment. Though the judge has the discretion to allow him to earn credit in jail concurrently, or "per cause," he opts to "stack" the fines (*i.e.*, make the defendant earn jail credit one offense at a time – consecutively).[38]

Thus, assuming $50 per 24 hours jail credit, the defendant will be committed to jail for 20 days [*i.e.*, Day 1 ($50) + Day 2 ($50) + Day 3 ($50) + Day 4 ($50) + Day 5 ($50) + Day 6 ($50) + Day 7 ($50) + Day 8 ($50) + Day 9 ($50) + Day 10 ($50) + Day 11 ($50) + Day 12 ($50) + Day 13 ($50) + Day 14 ($50) + Day 15 ($50) + Day 16 ($50) + Day 17 ($50) + Day 18 ($50) + Day 19 ($50) + Day 20 ($50) = $1,000 total].

3. Commitment Orders

In 2001, the Texas Attorney General issued two opinions pertaining to the subject of jail credit. While critics have questioned the reasoning of Attorney General Opinion No. JC-0393, it concluded the following:

- If the misdemeanant is already confined when the court orders a term of confinement to enforce the discharge of a fine or costs on a second conviction, the law presumes that the jail credits are earned concurrently unless the court specifically orders the terms to be served consecutively, pursuant to Articles 42.08 and 43.03(b).

- If the misdemeanant is not already confined when the court orders a term of confinement to enforce the discharge of a fine or costs or multiple fines or costs, the confinements are served consecutively.

- If fines or costs are discharged consecutively, the court's order must indicate that the confinements will run consecutively. (Article 42.08(a))

- Citing *Banks v. State*, 708 S.W.2d 460, 461 (Tex. Crim. App. 1986), the Attorney General added that the court's order also should contain five elements that may be adapted to the circumstances of a confinement to enforce a default:

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[38] See generally, *Ex parte Minjares*, 582 S.W.2d 105 (Tex. Crim. App. 1978).

1. The prior conviction's trial court number;

2. The correct name of the court where the prior conviction was taken;

3. The prior conviction's date;

4. The prior conviction's term; and

5. The prior conviction's nature.

B. Civil Collection[39]

Municipal courts are not limited to criminal enforcement measures.

Article 45.047 – Civil Collection of Fines After Judgment

If after a judgment and sentence is entered the defendant defaults in payment of a fine, the justice or judge may order the fine and costs collected by execution against the defendant's property in the same manner as a judgment in a civil suit.

While Texas law provides for various means of civil enforcement, such as *writ of execution* and *writ of garnishment*, these measures require considerable legal guidance to ensure their proper legal application (*e.g.*, not all real property and personal property is subject to execution). Consequently, such enforcement measures generally require the assistance of a city attorney well versed in civil procedure.

One low-cost, effective, civil alternative to *capias pro fine* warrants and to assist with the collection of municipal court judgments is the filing of an abstract of judgment. An abstract of judgment is a time-honored civil remedy that places a judgment lien on the defendant's real property in any county where the abstract is properly recorded. Chapter 52.001 of the Texas Property Code governs the issuance and application of abstracting judgments. The purpose of abstracting a judgment is two-fold:

1. To create a statutory lien on property where none previously existed; and

2. To give notice of a pre-existing judgment lien on property. Since the judgment lien is purely statutory in nature, the provisions of the Texas Property Code must be strictly complied with before the lien is established.

An abstract of judgment, if recorded and indexed in accordance with the Texas Property Code, constitutes a lien on the defendant's real property in any county where

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[39] The following contains an except from Bonnie L. Goldstein "Abstracting Municipal Court Judgments: A Heavy Lien on Defendants," *Municipal Court Recorder*, Volume 6, Number 2 (December 1996).

the abstract is properly recorded and indexed, including real property acquired after recording and indexing.[40] It does not attach to personal property.[41] This statutory judgment lien is superior to rights of subsequent purchasers and lien holders; therefore, it is critical to record the judgment once it has become final and the time for appeal has passed. The city attorney or prosecutor may prepare the abstract of judgment.[42]

The abstract of judgment must contain the following information:

1. The plaintiff's (the city's) and the defendant's name;

2. The defendant's birth date and driver's license number, if available;

3. The docket number;

4. The defendant's address or the nature of the citation and the date and place of the service of citation;

5. The date of the judgment and the amount of the judgment; and

6. The balance due.[43]

Although optional, a city should also include its address and contact person in the abstract.[44] The person who prepared the abstract must then verify the abstract.[45] To be effective, the abstract must be properly indexed and recorded in any county in which the defendant holds title to real property, or where it is anticipated that the defendant will purchase property. Upon payment of the proper fee, the county clerk will immediately record the properly acknowledged abstract in the county judgment records, indicating the date and hour the abstract is received.[46] The county clerk will, simultaneously with the recordation, alphabetically index the abstract in the judgment records, noting the plaintiff's name, the defendant's name, and the page number in the records where the abstract is recorded.[47] Credits on or satisfaction of the judgment also shall be reflected on each recorded abstract. No lien is created unless the judgment is properly recorded and indexed.[48] As the proponent of the abstract bears the burden of proof that all statutory procedures were followed, the city should confirm that all the

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[40] See, Section 52.001, Property Code.
[41] *Donley v. Youngstown Sheet & Tube Co.*, 328 S.W.2d 192, 197 (Tex. Civ. App.-Eastland 1959, writ ref'd n.r.e.).
[42] Section 52.002(b), Property Code.
[43] See, Section 52.003(a)(1-6), Property Code.
[44] See, Section 52.003(b), Property Code.
[45] See, Section 52.002(a), Property Code.
[46] See, Section 52.004(a), Property Code.
[47] Section 52.004(b), Property Code.
[48] *Alkas v. United Savings Association of Texas, Inc.*, 672 S.W.2d 852, 859 (Tex. App.-Corpus Christi 1984, writ ref'd n.r.e.).

information is included and that the abstract was duly and properly recorded and indexed in the county judgment records. There is no common law presumption that the public official properly performed his or her duties because of the specific statutory requirement relating to proof of indexing.

The process for abstracting a judgment is fairly straightforward and uncomplicated. A properly recorded and indexed abstract constitutes a lien that continues for 10 years; however, if the judgment becomes dormant (*i.e.*, no execution on the judgment has been issued) the lien ceases to exist.[49] Although the lien may be revived, the city should proceed with execution on the judgment either through a *writ of execution* or discovery in aid of execution, such as post-judgment interrogatories or a bill of discovery. The abstract is just the first step, albeit an important one to protect the city's interests; however, collection is never an easy process and requires methodical measures.

C. Contempt[50]

An alternative device that is at least theoretically available for imposing jail time on a person who is able but has refused to pay is the court's contempt power. A municipal judge has the power by statute to impose up to three days in jail for the willful refusal of a valid court order.[51] This jail time would not even be regarded as punishment; "in such case, if the party is punished at all, it could appear to be self-inflicted."[52] Judges have been reluctant to use the contempt power to enforce the payment of a fine for several reasons:

- Concern about the stringent notice and specificity requirements for a contempt order;

- Uncertainty about whether the jail time imposed under the contempt sanction should be credited against the fine (technically it would only coerce payment of the fine, but could not satisfy it); and

- Reservations based on the "back-door" method of imposing jail time.

In view of the clear statutory authority available to enforce payment of the fine, one need not resort to the more extraordinary option of contempt.

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[49] Sections 52.001 and 52.006, Property Code.
[50] The following is reproduced from Charles P. Bubany's "Authority of the Municipal Court to Require A Defendant to Lay Out a Fine," *Municipal Court Recorder,* Volume 5, Number 4 (July 1995).
[51] Section 21.002(b), Government Code.
[52] *Ex parte Tinsley,* 40 S.W. 306, 311 (1897).

INDIGENCE AND ENFORCEMENT

CASE LAW APPENDIX

UNITED STATES SUPREME COURT

TATE v. SHORT P. 2

BEARDEN v. GEORGIA P. 6

TEXAS COURT OF CRIMINAL APPEALS

Ex Parte Preston A. Tate P. 15

Ex parte Rafael MINJARES, Jr. P. 17

EX PARTE JAMES M. HANNINGTON P. 20

TATE v. SHORT

No. 324

SUPREME COURT OF THE UNITED STATES

401 U.S. 395; 91 S. Ct. 668; 28 L. Ed. 2d 130; 1971 U.S. LEXIS 74

January 14, 1971, Argued

March 2, 1971, Decided

PRIOR HISTORY: {****1}

CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS.

DISPOSITION: 445 S. W. 2d 210, reversed and remanded.

SUMMARY: In the Corporation Court of Houston, Texas, the petitioner was convicted of nine traffic offenses which were punishable by fines only, and he was fined a total of $ 425. He was unable to pay the fines because of indigency, and pursuant to a state statute and municipal ordinance, the Corporation Court ordered him imprisoned for 85 days, each day of imprisonment serving as a substitute for $ 5 of the fines. His petition for habeas corpus was denied by the County Criminal Court of Harris County, and the Texas Court of Criminal Appeals affirmed, rejecting the petitioner's contention that because he was too poor to pay the fines his imprisonment was unconstitutional **(445 SW2d 210).**

On certiorari, the United States Supreme Court reversed and remanded the case. In an opinion by Brennan, J., expressing the view of seven members of the court, it was held that imprisonment of the petitioner solely because of his indigency constituted invidious discrimination in violation of the equal protection clause of the Fourteenth Amendment.

Black, J., concurred in the result.

Harlan, J., concurred in the court's judgment, but on the basis of due process rather than equal protection.

Blackmun, J., concurring in the court's opinion, stated that the court's decision might encourage legislatures to eliminate fines and to make jail terms the only punishment for a broad range of traffic offenses.

SYLLABUS: Petitioner, an indigent, was convicted of traffic offenses and fined a total of $ 425. Though Texas law provides only for fines for such offenses, it requires that persons unable to pay must be incarcerated for sufficient time to satisfy their fines, at the rate of $ 5 per day, which in petitioner's case meant an 85-day term. The state courts denied his petition for habeas corpus. *Held*: It is a denial of equal protection to limit punishment to payment of a fine for those who are able to pay it but to convert the fine to imprisonment for those who are unable to pay it. ***Williams* v. *Illinois*, 399 U.S. 235.** Pp. 397-401.

COUNSEL: Norman Dorsen argued the cause for petitioner. With him on the briefs were Peter Sanchez-Navarro, Jr., and Stanley A. Bass.

Joseph G. Rollins argued the cause for respondent. With him on the brief were Crawford C. Martin, Attorney General of Texas, Nola White, First Assistant Attorney General, Alfred Walker, Executive Assistant Attorney General, and Robert C. Flowers and Gilbert J. Pena, Assistant Attorneys General.

Allan {****2} Ashman filed a brief for the National Legal Aid and Defender Association as amicus curiae urging reversal.

JUDGES: Brennan, J., delivered the opinion of the Court, in which Burger, C. J., and Douglas, Stewart, White, Marshall, and Blackmun, JJ., joined. Blackmun, J., filed a concurring statement, post, p. 401. Black, J., concurred in the result. Harlan, J., filed a statement concurring in the judgment, post, p. 401.

OPINIONBY: BRENNAN

OPINION: {*396} {***132} {**669} MR. JUSTICE BRENNAN delivered the opinion of the Court.

Petitioner accumulated fines of $ 425 on nine convictions in the Corporation Court of Houston, Texas, for traffic offenses. He was unable to pay the fines because of indigency n1 and the Corporation Court, which otherwise has no jurisdiction to impose prison sentences, n2 {**670} committed him to the municipal prison farm according to the provisions of a state statute and municipal ordinance n3 which required that he remain there a sufficient {*397} time to satisfy the fines at the rate of five dollars for each day; this required that he serve 85 days at the prison farm. After 21 days in custody, petitioner was released on bond when he applied to the County Criminal Court {****3} of Harris County for a writ of habeas corpus.

He alleged that: "Because I am too poor, I am, therefore, unable to pay the accumulated fine of $ 425." The county court held that "legal cause has been shown for the imprisonment," and denied the application. {***133} The Court of Criminal Appeals of Texas affirmed, stating: "We overrule appellant's contention that because he is too poor to pay the fines his imprisonment is unconstitutional." **445 S. W. 2d 210 (1969).** We granted certiorari, **399 U.S. 925 (1970).** We reverse on the authority of our decision in ***Williams* v. *Illinois*, 399 U.S. 235 (1970).**

- - -Footnotes- - -

n1 At the habeas corpus hearing the assistant district attorney appearing for the State stipulated: "We would stipulate he is poverty stricken, and that his whole family has been for all periods of time therein, and probably always will be." Petitioner's uncontradicted testimony at the hearing was that, prior to his imprisonment, he earned between $ 25 and $ 60 a week in casual employment. He also received a monthly Veterans Administration check of $ 104. He has a wife and two children dependent on him for support. We were advised on oral argument that under Texas law his automobile was not subject to execution to collect the fines.

{****4}

n2 Tex. Code Crim. Proc., Art. 4.14 (1966) provides:

"The corporation court in each incorporated city, town or village of this State shall have jurisdiction within the corporate limits in all criminal cases arising under the ordinances of such city, town or village, and shall have concurrent jurisdiction with any justice of the peace in any precinct in which said city, town or village is situated in all criminal cases arising under the criminal laws of this State, in which punishment is by fine only, and where the maximum of such fine may not exceed two hundred dollars, and arising within such corporate limits."

n3 Tex. Code Crim. Proc., Art. 45.53 (1966), provides in pertinent part:

"A defendant placed in jail on account of failure to pay the fine and costs can be discharged on habeas corpus by showing:

"1. That he is too poor to pay the fine and costs; and

"2. That he has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of $ 5 for each day."

Houston Code § 35-8 provides:

"Each person committed to the county jail or to the municipal prison farm for non-payment of their fine arising out of his conviction of a misdemeanor in the corporation court shall receive a credit against such fine of five dollars ($ 5.00) for each day or fraction of a day that he has served."

- - -End Footnotes- - -

{****5}

The Illinois statute involved in *Williams* authorized both a fine and imprisonment. Williams was given the maximum sentence for petty theft of one year's imprisonment and a $ 500 fine, plus $ 5 in court costs. The judgment, as permitted by the Illinois statute, provided that if, when the one-year sentence expired, Williams did not pay the fine and court costs, he was to remain in jail a sufficient length of time to satisfy the total amount at the rate of $ 5 per day. We held that the Illinois statute as applied to Williams worked an invidious discrimination solely because he was too poor to pay the fine, and therefore violated the Equal Protection Clause.

{***HR1} [1]
{***HR2} [2]
Although the instant case involves offenses punishable by fines only, petitioner's imprisonment for nonpayment {*398} constitutes precisely the same unconstitutional discrimination since, like Williams, petitioner was subjected to imprisonment solely because of his indigency. n4 In ***Morris* v. *Schoonfield*, 399 U.S. 508, 509 (1970),** four members of the Court anticipated the problem of this case and stated the view, which we now adopt, that

{**671} "the same constitutional defect condemned in {****6} *Williams* also inheres in jailing an indigent for failing to make immediate payment of any fine, whether or not the fine is accompanied by a jail term and whether or not the jail term of the indigent extends beyond the maximum term that may be imposed on a person willing and able to pay a fine. In each case, the Constitution prohibits the State from imposing a fine

as a sentence and then automatically converting it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full."

- - -Footnotes- - -

n4 Houston Code § 35-9 provides:

"Additional credit against the fine of each prisoner may be granted by the superintendent of the municipal prison farm for good conduct, industry and obedience; provided, however, that such additional credit shall not exceed in time more than one-half (1/2) day credit on his fine for each day's work."

An implementing regulation of the Fines Bureau Division of the Houston Corporation Court interprets this provision as follows:

"If a person appears in court and is found guilty and does not have money to pay his fine, he is committed to jail to serve the amount of the fine at the rate of $ 5.00 per day. In certain cases a person may be allowed $ 7.50 credit per day."

It does not appear that petitioner was granted the increased credit for any of the 21 days he served before his release.

- - -End Footnotes- - -
{****7}

{***HR3} [3]
{***HR4} [4]
Our opinion in *Williams* stated the premise of this conclusion in saying that "the Equal Protection Clause of the Fourteenth Amendment requires that the statutory {*399} ceiling placed on imprisonment for any substantive offense be the same for all defendants irrespective of their economic status." **399 U.S., at 244.** Since Texas has legislated a "fines only" policy for traffic offenses, that statutory ceiling cannot, consistently with the Equal Protection Clause, limit the punishment to payment of the fine if one is able to pay it, yet convert the fine into a prison term for an indigent defendant without the {***134} means to pay his fine. Imprisonment in such a case is not imposed to further any penal objective of the State. It is imposed to augment the State's revenues but obviously does not serve that purpose; the defendant cannot pay because he is indigent and his imprisonment, rather than aiding collection of the revenue, saddles the State with the cost of feeding and housing him for the period of his imprisonment.

{***HR5} [5]
{***HR6} [6]
There are, however, other alternatives to which the State may constitutionally resort to serve its concededly valid interest in enforcing {****8} payment of fines. We repeat our observation in *Williams* in that regard, **399 U.S., at 244-245** (footnotes omitted):

"The State is not powerless to enforce judgments against those financially unable to pay a fine; indeed, a different result would amount to inverse discrimination since it would enable an indigent to avoid both the fine and imprisonment for nonpayment whereas other defendants must always suffer one or the other conviction.

"It is unnecessary for us to canvass the numerous alternatives to which the State by legislative enactment -- or judges within the scope of their authority -- may resort in order to avoid imprisoning an indigent beyond the statutory maximum for involuntary nonpayment of a fine or court costs. Appellant has suggested several plans, some of which are {*400} already utilized in some States, while others resemble those proposed by various studies. The State is free to choose from among the variety of solutions already proposed and, of course, it may devise new ones." n5

- - -Footnotes- - -

n5 Several States have a procedure for paying fines in installments. *E. g.*, Cal. Penal Code § 1205 (1970) (misdemeanors); Del. Code Ann., Tit. 11, § 4332 (c) (Supp. 1968); Md. Ann. Code, Art. 38, § 4 (a)(2) (Supp. 1970); Mass. Gen. Laws Ann., c. 279, § 1A (1959); N. Y. Code Crim. Proc. § 470-d (1)(b) (Supp. 1970); Pa. Stat. Ann., Tit. 19, § 953 (1964); Wash. Rev. Code § 9.92.070.

This procedure has been widely endorsed as effective not only to collect the fine but also to save the expense of maintaining a prisoner and avoid the necessity of supporting his family under the state welfare program while he is confined. See, *e. g.*, Final Report of the National Commission on Reform of Federal Criminal Laws, Proposed New Federal Criminal Code § 3302 (2) (1971); American Bar Association, Project on Standards for Criminal Justice, Sentencing

Alternatives and Procedures § 2.7 (b), pp. 119-122 (Approved Draft 1968); President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts 18 (1967); ALI, Model Penal Code § 302.1 (1) (Proposed Official Draft 1962). See also Comment, Equal Protection and the Use of Fines as Penalties for Criminal Offenses, **1966 U. Ill. L. F. 460;** Note, The Equal Protection Clause and Imprisonment of the Indigent for Nonpayment of Fines, **64 Mich. L. Rev. 938 (1966);** Note, Imprisonment for Nonpayment of Fines and Costs: A New Look at the Law and the Constitution, **22 Vand. L. Rev. 611 (1969);** Note, Fines and Fining -- An Evaluation, **101 U. Pa. L. Rev. 1013 (1953);** J. Sellin, Recent Penal Legislation in Sweden 14 (1947); Cordes, Fines and Their Enforcement, 2 J. Crim. Sci. 46 (1950); S. Rubin, H. Weihofen, G. Edwards, & S. Rosenzweig, The Law of Criminal Correction 253 and n. 154 (1963); E. Sutherland & D. Cressey, Principles of Criminology 276 (6th ed. 1960). See also ***Williams* v. *Illinois*, 399 U.S., at 244-245, n. 21.**

- - -End Footnotes- - -

{****9}

{**672} We emphasize that our holding today does not suggest any constitutional infirmity in imprisonment of a defendant with the means to pay a fine who refuses or neglects to do so. Nor is our decision to be understood {*401} as precluding imprisonment as an enforcement method when alternative means are unsuccessful despite the defendant's reasonable {***135} efforts to satisfy the fines by those means; the determination of the constitutionality of imprisonment in that circumstance must await the presentation of a concrete case.

The judgment of the Court of Criminal Appeals of Texas is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

MR. JUSTICE BLACK concurs in the result.

MR. JUSTICE HARLAN concurs in the judgment of the Court on the basis of the considerations set forth in his opinion concurring in the result in ***Williams* v. *Illinois*, 399 U.S. 235, 259 (1970).**

CONCURBY: BLACKMUN

CONCUR: MR. JUSTICE BLACKMUN, concurring.

The Court's opinion is couched in terms of being constitutionally protective of the indigent defendant. I merely add the observation that the reversal of this Texas judgment may {****10} well encourage state and municipal legislatures to do away with the fine and to have the jail term as the only punishment for a broad range of traffic offenses. Eliminating the fine whenever it is prescribed as alternative punishment avoids the equal protection issue that indigency occasions and leaves only possible Eighth Amendment considerations. If, as a nation, we ever reach that happy point where we are willing to set our personal convenience to one side and we are really serious about resolving the problems of traffic irresponsibility and the frightful carnage it spews upon our highways, a development of that kind may not be at all undesirable.

BEARDEN v. GEORGIA

No. 81-6633

SUPREME COURT OF THE UNITED STATES

461 U.S. 660; 103 S. Ct. 2064; 76 L. Ed. 2d 221; 1983 U.S. LEXIS 39; 51 U.S.L.W. 4616

January 11, 1983, Argued

May 24, 1983, Decided

PRIOR HISTORY: {****1}

CERTIORARI TO THE COURT OF APPEALS OF GEORGIA.

DISPOSITION: 161 Ga. App. 640, 288 S. E. 2d 662, reversed and remanded.

DECISION: Fourteenth Amendment held to preclude state court from automatically revoking probation and imposing prison term, when probationer could not pay fine, without finding that he did not make bona fide effort to pay or that alternative forms of punishment were inadequate.

SUMMARY: The Superior Court, Catoosa County, Georgia, after a hearing, revoked the probation of a defendant who had pleaded guilty to burglary and theft by receiving stolen property on the grounds that the defendant had failed to pay a fine and the restitution upon which his probation had been conditioned. The defendant, by virtue of the Georgia First Offender's Act, had received a sentence of probation conditioned upon his payment of a fine and restitution within a set period of time and had borrowed funds to pay part of the amount owed but subsequently lost his job, and, despite repeated efforts, was unable to find other work, and was unable to pay the balance of his fine and to the restitution within the set time period. The Georgia Court of Appeals rejected the defendant's claim that imprisoning him for inability to pay the fine and make restitution violated the **Equal Protection Clause of the Fourteenth Amendment of the Federal Constitution (161 Ga App 640, 288 SE2d 662).** The Georgia Supreme Court denied review.

On certiorari, the United States Supreme Court reversed and remanded. In an opinion by O'Connor, J., joined by Brennan, Marshall, Blackmun, and Stevens, JJ., it was held that a sentencing court may not automatically revoke probation because the probationer could not pay his fine, without determining that the probationer had not made sufficient bona fide efforts to pay or that adequate alternative forms of punishment did not exist.

White, J., joined by Burger, Ch. J., and Powell and Rehnquist, JJ., concurred in the judgment on the ground that the state court failed to find that the sentence was a rational and necessary trade-off to punish an indigent defendant, but declared that the state court need not have found that non-prison alternatives were inadequate before imposing a prison term.

SYLLABUS: Petitioner pleaded guilty in a Georgia trial court to burglary and theft by receiving stolen property, but the court, pursuant to the Georgia First Offender's Act, did not enter a judgment of guilt and sentenced petitioner to probation on the condition that he pay a $ 500 fine and $ 250 in restitution, with $ 100 payable that day, $ 100 the next day, and the $ 550 balance within four months. Petitioner borrowed money and paid the first $ 200, but about a month later he was laid off from his job, and, despite repeated efforts, was unable to find other work. Shortly before the $ 550 balance became due, he notified the probation office that his payment was going to be late. Thereafter, the State filed a petition to revoke petitioner's probation because he had not paid the balance, and the trial court, after a hearing, revoked probation, entered a conviction, and sentenced petitioner to prison. The record of the hearing disclosed that petitioner had been unable to find employment and had no assets or income. The Georgia Court of Appeals rejected {****2} petitioner's claim that imprisoning him for inability to pay the fine and make restitution violated the Equal Protection Clause of the Fourteenth Amendment. The Georgia Supreme Court denied review.

Held: A sentencing court cannot properly revoke a defendant's probation for failure to pay a fine and make restitution, absent evidence and findings that he was somehow responsible for the failure or that alternative forms of punishment were inadequate to meet the State's interest in punishment and deterrence, and hence here the trial court erred in automatically revoking petitioner's probation and turning the fine into a prison sentence without making such a determination. Pp. 664-674.

(a) If a State determines a fine or restitution to be the appropriate and adequate penalty for the crime, it may not thereafter imprison a person solely because he lacked the resources to pay it. ***Williams* v. *Illinois*, 399 U.S. 235; *Tate* v. *Short*, 401 U.S. 395.** If the probationer has willfully refused to pay the fine or restitution when he has the resources to pay or has failed to make sufficient bona fide efforts to seek employment or borrow money {****3} to pay, the State is justified in using imprisonment as a sanction to enforce collection. But if the probationer has made all reasonable bona fide efforts to pay the fine and yet cannot do so through no fault of his own, it is fundamentally unfair to revoke probation automatically without considering whether adequate alternative methods of punishing the probationer are available to meet the State's interest in punishment and deterrence. Pp. 664-669.

(b) The State may not use as the sole justification for imprisonment the poverty or inability of the probationer to pay the fine and to make restitution if he has demonstrated sufficient bona fide efforts to do so. Pp. 669-672.

(c) Only if alternative measures of punishment are not adequate to meet the State's interests in punishment and deterrence may the court imprison a probationer who has made sufficient bona fide efforts to pay the fine. To do otherwise would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment. Pp. 672-673.

COUNSEL: James H. Lohr, by appointment of the **Court, 459 U.S. 819,** {****4} argued the cause pro hac vice and filed briefs for petitioner.

George M. Weaver, Assistant Attorney General of Georgia, argued the cause for respondent. With him on the brief were Michael J. Bowers, Attorney General, Robert S. Stubbs II, Executive Assistant Attorney General, and Marion O. Gordon and John C. Walden, Senior Assistant Attorneys General.

JUDGES: O'CONNOR, J., delivered the opinion of the Court, in which BRENNAN, MARSHALL, BLACKMUN, and STEVENS, JJ., joined. WHITE, J., filed an opinion concurring in the judgment, in which BURGER, C. J., and POWELL and REHNQUIST, JJ., joined, post, p. 675.

OPINIONBY: O'CONNOR

OPINION: {*661} {***225} {**2066} JUSTICE O'CONNOR delivered the opinion of the Court.

{***HR1A} [1A]

The question in this case is whether the Fourteenth Amendment prohibits a State from revoking an indigent defendant's probation {**2067} for failure to pay a fine and restitution. Its resolution involves a delicate balance between the acceptability, and indeed wisdom, of considering all relevant factors when determining {***226} an appropriate sentence for an individual and the impermissibility of imprisoning a defendant solely because of his lack of financial resources. We conclude that the {****5} {*662} trial court erred in automatically revoking probation because petitioner could not pay his fine, without determining that petitioner had not made sufficient bona fide efforts to pay or that adequate alternative forms of punishment did not exist. We therefore reverse the judgment of the Georgia Court of Appeals upholding the revocation of probation, and remand for a new sentencing determination.

I

In September 1980, petitioner was indicted for the felonies of burglary and theft by receiving stolen property. He pleaded guilty, and was sentenced on October 8, 1980. Pursuant to the Georgia First Offender's Act, Ga. Code Ann. § 27-2727 *et seq.* (current version at § 42-8-60 *et seq.* (Supp. 1982)), the trial court did not enter a judgment of guilt, but deferred further proceedings and sentenced petitioner to three years on probation for the burglary charge and a concurrent one year on probation for the theft charge. As a condition of probation, the trial court ordered petitioner to pay a $ 500 fine and $ 250 in restitution. n1 Petitioner was to pay $ 100 that day, $ 100 the next day, and the $ 550 balance within four months.

- - -Footnotes- - -

n1 The trial court ordered a payment of $ 200 restitution for the theft by receiving charge; and ordered payment of $ 50 in restitution and $ 500 fine for the burglary charge.

The other conditions of probation prohibited petitioner from leaving the jurisdiction of the court without permission, from drinking alcoholic beverages, using or possessing narcotics, or visiting places where alcoholic beverages or narcotics are sold, from keeping company with persons of bad reputation, and from violating any penal law; and required him to avoid places of disreputable character, to work faithfully at suitable employment insofar as possible, and to report to the probation officer as

directed and to permit the probation officer to visit him.

- - -End Footnotes- - -

{****6}

Petitioner borrowed money from his parents and paid the first $ 200. About a month later, however, petitioner was laid off from his job. Petitioner, who has only a ninth-grade education and cannot read, tried repeatedly to find other {*663} work but was unable to do so. The record indicates that petitioner had no income or assets during this period.

Shortly before the balance of the fine and restitution came due in February 1981, petitioner notified the probation office he was going to be late with his payment because he could not find a job. In May 1981, the State filed a petition in the trial court to revoke petitioner's probation because he had not paid the balance. n2 After an evidentiary hearing, the trial court revoked probation for failure to pay the balance of the fine and restitution, n3 entered a {***227} conviction, and sentenced petitioner to serve the remaining portion of the probationary period in prison. n4 The Georgia {**2068} Court of Appeals, relying on earlier Georgia Supreme Court cases, n5 rejected petitioner's claim that imprisoning him for inability to pay the fine violated the Equal Protection Clause of the Fourteenth Amendment. The Georgia Supreme {****7} Court denied review. Since other courts have held that revoking the probation of indigents for failure to pay fines does violate the Equal Protection {*664} Clause, n6 we granted certiorari to resolve this important issue in the administration of criminal justice. **458 U.S. 1105 (1982).**

- - -Footnotes- - -

n2 The State's petition alleged two grounds for revoking probation: petitioner's failure to pay the fine and restitution, and an alleged burglary he committed on May 10, 1981. The State abandoned the latter ground at the hearing to revoke probation, and counsel has informed us that petitioner was later acquitted of the charge. Brief for Petitioner 4, n. 1.

n3 The trial court also found that petitioner violated the conditions of probation by failing to report to his probation officer as directed. Since the trial court was unauthorized under state law to revoke probation on a ground not stated in the petition, ***Radcliff* v. *State*, 134 Ga. App. 244, 214 S. E. 2d 179 (1975),** the Court of Appeals upheld the revocation solely on the basis of petitioner's failure to pay the fine and restitution.

{****8}

n4 The trial court first sentenced petitioner to five years in prison, with a concurrent 3-year sentence for the theft conviction. Since the record of the initial sentencing hearing failed to reveal that petitioner had been warned that a violation of probation could result in a longer prison term than the original probationary period, as required by ***Stephens* v. *State*, 245 Ga. 835, 268 S. E. 2d 330 (1980),** the court reduced the prison term to the remainder of the probationary period.

n5 ***Hunter* v. *Dean*, 240 Ga. 214, 239 S. E. 2d 791 (1977),** cert. dism'd, **439 U.S. 281 (1978); *Calhoun* v. *Couch*, 232 Ga. 467, 207 S. E. 2d 455 (1974).**

n6 See, *e. g.*, ***Frazier* v. *Jordan*, 457 F.2d 726 (CA5 1972); *In re Antazo*, 3 Cal. 3d 100, 473 P. 2d 999 (1970); *State* v. *Tackett*, 52 Haw. 601, 483 P. 2d 191 (1971); *State* v. *De Bonis*, 58 N. J. 182, 276 A. 2d 137 (1971); *State ex rel. Pedersen* v. *Blessinger*, 56 Wis. 2d 286, 201 N. W. 2d 778 (1972).**

- - -End Footnotes- - -

{****9}

II

This Court has long been sensitive to the treatment of indigents in our criminal justice system. Over a quarter-century ago, Justice Black declared that "[there] can be no equal justice where the kind of trial a man gets depends on the amount of money he has." ***Griffin* v. *Illinois*, 351 U.S. 12, 19 (1956)** (plurality opinion). *Griffin*'s principle of "equal justice," which the Court applied there to strike down a state practice of granting appellate review only to persons able to afford a trial transcript, has been applied in numerous other contexts. See, *e. g.*, ***Douglas* v. *California*, 372 U.S. 353 (1963)** (indigent entitled to counsel on first direct appeal); ***Roberts* v. *LaVallee*, 389 U.S. 40 (1967)** (indigent entitled to free transcript of preliminary hearing for use at trial); ***Mayer* v. *Chicago*, 404 U.S. 189 (1971)** (indigent cannot be denied an adequate record to appeal a conviction under a fine-only statute). Most relevant to the issue here is the holding in ***Williams* v. *Illinois*, 399 U.S. 235**

(1970), that a State cannot subject a certain class of convicted {****10} defendants to a period of imprisonment beyond the statutory maximum solely because they are too poor to pay the fine. *Williams* was followed and extended in ***Tate* v. *Short*, 401 U.S. 395 (1971),** which held that a State cannot convert a fine imposed under a fine-only statute into a jail term solely because the defendant is indigent and cannot immediately pay the fine in full. But the Court has also recognized limits on the principle of protecting indigents in the criminal justice system. For example, in ***Ross* v. *Moffitt*, 417 U.S. 600 (1974),** we held that indigents {*665} had no constitutional right to appointed counsel {***228} for a discretionary appeal. In ***United States* v. *MacCollum*, 426 U.S. 317 (1976)** (plurality opinion), we rejected an equal protection challenge to a federal statute which permits a district court to provide an indigent with a free trial transcript only if the court certifies that the challenge to his conviction is not frivolous and the transcript is necessary to prepare his petition.

{***HR2} [2]
Due process and equal protection principles converge in the Court's analysis in these cases. See {****11} ***Griffin* v. *Illinois, supra*, at 17.** Most decisions in this area have rested on an equal protection framework, although Justice Harlan in particular has insisted that a due process approach more accurately captures the competing concerns. See, *e. g.*, {**2069} ***Griffin* v. *Illinois, supra*, at 29-39** (Harlan, J., dissenting); ***Williams* v. *Illinois, supra*, at 259-266** (Harlan, J., concurring). As we recognized in ***Ross* v. *Moffitt, supra*, at 608-609,** we generally analyze the fairness of relations between the criminal defendant and the State under the Due Process Clause, while we approach the question whether the State has invidiously denied one class of defendants a substantial benefit available to another class of defendants under the Equal Protection Clause.

The question presented here is whether a sentencing court can revoke a defendant's probation for failure to pay the imposed fine and restitution, absent evidence and findings that the defendant was somehow responsible for the failure or that alternative forms of punishment were inadequate. The parties, following the framework of {****12} *Williams* and *Tate*, have argued the question primarily in terms of equal protection, and debate vigorously whether strict scrutiny or rational basis is the appropriate standard of review. There is no doubt that the State has treated the petitioner differently from a person who did not fail to pay the imposed fine and therefore did not violate probation. To determine whether this differential treatment violates the Equal Protection {*666} Clause, one must determine whether, and under what circumstances, a defendant's indigent status may be considered in the decision whether to revoke probation. This is substantially similar to asking directly the due process question of whether and when it is fundamentally unfair or arbitrary for the State to revoke probation when an indigent is unable to pay the fine. n7 {***229} Whether analyzed in terms of equal protection or due process, n8 the issue cannot be resolved by resort to easy slogans or pigeonhole analysis, but rather requires a careful inquiry into such factors as "the nature of the individual {*667} interest affected, the extent to which it is affected, the rationality of the connection between legislative means and {****13} purpose, [and] the existence of alternative means for effectuating the purpose . . . ." ***Williams* v. *Illinois, supra*, at 260** (Harlan, J., concurring).

- - -Footnotes- - -

n7 We have previously applied considerations of procedural and substantive fairness to probation and parole revocation proceedings. In ***Morrissey* v. *Brewer*, 408 U.S. 471 (1972),** where we established certain procedural requirements for parole revocation hearings, we recognized that society has an "interest in treating the parolee with basic fairness." ***Id.*, at 484.** We addressed the issue of fundamental fairness more directly in ***Gagnon* v. *Scarpelli*, 411 U.S. 778 (1973),** where we held that in certain cases "fundamental fairness -- the touchstone of due process -- will require that the State provide at its expense counsel for indigent probationers or parolees." ***Id.*, at 790.** Fundamental fairness, we determined, presumptively requires counsel when the probationer claims that "there are substantial reasons which justified or mitigated the violation and make revocation inappropriate." *Ibid.* In ***Douglas* v. *Buder*, 412 U.S. 430 (1973),** we found a substantive violation of due process when a state court had revoked probation with no evidence that the probationer had violated probation. Today we address whether a court can revoke probation for failure to pay a fine and restitution when there is no evidence that the petitioner was at fault in his failure to pay or that alternative means of punishment were inadequate.

{****14}

n8 A due process approach has the advantage in this context of directly confronting the intertwined question of the role that a defendant's financial background can play in determining an appropriate sentence. When the court is initially considering what sentence to impose, a defendant's level of financial resources is a point on a spectrum rather than a classification. Since indigency in this context is a relative term rather than a classification, fitting "the problem of this case into an equal protection framework is a task too Procrustean to be rationally accomplished," ***North Carolina* v. *Pearce*, 395 U.S. 711, 723 (1969).** The more appropriate question is whether consideration of a defendant's financial background in setting or resetting a sentence is so arbitrary or unfair as to be a denial of due process.

- - -End Footnotes- - -

In analyzing this issue, of course, we do not write on a clean slate, for both *Williams* and *Tate* analyzed similar situations. {**2070} The reach and limits of their holdings are vital to a proper resolution of the issue here. In *Williams*, a defendant {****15} was sentenced to the maximum prison term and fine authorized under the statute. Because of his indigency he could not pay the fine. Pursuant to another statute equating a $ 5 fine with a day in jail, the defendant was kept in jail for 101 days beyond the maximum prison sentence to "work out" the fine. The Court struck down the practice, holding that "[once] the State has defined the outer limits of incarceration necessary to satisfy its penological interests and policies, it may not then subject a certain class of convicted defendants to a period of imprisonment beyond the statutory maximum solely by reason of their indigency." **399 U.S., at 241-242.** In ***Tate* v. *Short*, 401 U.S. 395 (1971),** we faced a similar situation, except that the statutory penalty there permitted only a fine. Quoting from a concurring opinion in ***Morris* v. *Schoonfield*, 399 U.S. 508, 509 (1970),** we reasoned that "'the same constitutional defect condemned in *Williams* also inheres in jailing an indigent for failing to make immediate payment of any fine, whether or not the fine is accompanied by a jail term and whether or not the jail term of {****16} the indigent extends beyond the maximum term that may be imposed on a person willing and able to pay a fine.'" **401 U.S., at 398.**

{***HR3} [3]
The rule of *Williams* and *Tate*, then, is that the State cannot "'[impose] a fine as a sentence and then automatically [convert] it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full.'" *Tate,* {***230} *supra*, at 398. In other words, if the State determines a fine or restitution to be the appropriate and adequate penalty for the crime, it may not thereafter imprison a person solely because {*668} he lacked the resources to pay it. Both *Williams* and *Tate* carefully distinguished this substantive limitation on the imprisonment of indigents from the situation where a defendant was at fault in failing to pay the fine. As the Court made clear in *Williams*, "nothing in our decision today precludes imprisonment for willful refusal to pay a fine or court costs." **399 U.S., at 242, n. 19.** Likewise in *Tate*, the Court "[emphasized] that our holding today does not suggest any constitutional infirmity in imprisonment of a defendant with the means to pay {****17} a fine who refuses or neglects to do so." **401 U.S., at 400.**

{***HR4} [4]
{***HR5} [5]
{***HR6} [6]
{***HR7A} [7A]
This distinction, based on the reasons for nonpayment, is of critical importance here. If the probationer has willfully refused to pay the fine or restitution when he has the means to pay, the State is perfectly justified in using imprisonment as a sanction to enforce collection. See ALI, Model Penal Code § 302.2(1) (Prop. Off. Draft 1962). Similarly, a probationer's failure to make sufficient bona fide efforts to seek employment or borrow money in order to pay the fine or restitution may reflect an insufficient concern for paying the debt he owes to society for his crime. In such a situation, the State is likewise justified in revoking probation and using imprisonment as an appropriate penalty for the offense. But if the probationer has made all reasonable efforts to pay the fine or restitution, and yet cannot do so through no fault of his own, n9 it is fundamentally unfair to revoke {**2071} probation automatically {*669} without considering whether adequate alternative methods of punishing the defendant are available. This lack of fault provides a "substantial [reason] which [justifies] or {****18} [mitigates] the violation and [makes] revocation inappropriate." ***Gagnon* v. *Scarpelli*, 411 U.S. 778, 790 (1973).** n10 Cf. ***Zablocki* v. *Redhail*, 434 U.S. 374, 400 {***231} (1978)** (POWELL, J., concurring) (distinguishing, under both due process and equal protection analyses, persons who shirk their moral and legal obligation to pay child support from those wholly unable to pay).

- - -Footnotes- - -

n9

{***HR7B} [7B]
We do not suggest that, in other contexts, the probationer's lack of fault in violating a term of probation would necessarily prevent a court from revoking probation. For instance, it may indeed be reckless for a court to permit a person convicted of driving while intoxicated to remain on probation once it becomes evident that efforts at controlling his chronic drunken driving have failed. Cf. ***Powell* v. *Texas*, 392 U.S. 514 (1968); *Robinson* v. *California*, 370 U.S. 660 (1962).** Ultimately, it must be remembered that the sentence was not imposed for a circumstance beyond the probationer's control "but because he had committed a crime." ***Williams*, 399 U.S., at 242.** In contrast to a condition like chronic drunken driving, however, the condition at issue here -- indigency -- is itself no threat to the safety or welfare of society.
{****19}

n10 Numerous decisions by state and federal courts have recognized that basic fairness forbids the revocation of probation when the probationer is without fault in his failure to pay the fine. For example, in ***United States* v. *Boswell*, 605 F.2d 171 (CA5 1979),** the court distinguished between revoking probation where the defendant did not have the resources to pay restitution and had no way to acquire them -- a revocation the court found improper -- from revoking probation where the defendant had the resources to pay or had negligently or deliberately allowed them to be dissipated in a manner that resulted in his inability to pay -- an entirely legitimate action by the trial court. Accord, ***United States* v. *Wilson*, 469 F.2d 368 (CA2 1972); *United States* v. *Taylor*, 321 F.2d 339 (CA4 1963); *In re Antazo*, 3 Cal. 3d, at 115-117, 473 P. 2d, at 1007-1009; *State* v. *Huggett*, 55 Haw. 632, 525 P. 2d 1119 (1974); *Huggett* v. *State*, 83 Wis. 2d 790, 800-802, 266 N. W. 2d 403, 408 (1978).** Commentators have similarly distinguished between the permissibility of revoking probation for contumacious failure to pay a fine, and the impermissibility of revoking probation when the probationer made good-faith efforts to pay. See, *e. g.*, ABA Standards for Criminal Justice 18-7.4 and Commentary (2d ed. 1980) ("incarceration should be employed only after the court has examined the reasons for nonpayment"); ALI, Model Penal Code § 302.2 (Prop. Off. Draft 1962) (distinguishing "contumacious" failure to pay fine from "good faith effort" to obtain funds); National Advisory Commission on Criminal Justice Standards and Goals, Corrections § 5.5 (1973); National Conference of Commissioners on Uniform State Laws, Model Sentencing and Corrections Act §§ 3-403, 3-404 (1978). See also Me. Rev. Stat. Ann., Tit. 17-A, § 1304 (Supp. 1982); Ill. Rev. Stat., ch. 38, para. 1005-6-4(d) (1981).

- - -End Footnotes- - -
{****20}

{***HR8A} [8A]
{***HR9} [9]
The State, of course, has a fundamental interest in appropriately punishing persons -- rich and poor -- who violate its criminal laws. A defendant's poverty in no way immunizes him from punishment. Thus, when determining initially {*670} whether the State's penological interests require imposition of a term of imprisonment, the sentencing court can consider the entire background of the defendant, including his employment history and financial resources. See ***Williams* v. *New York*, 337 U.S. 241, 250, and n. 15 (1949).** As we said in ***Williams* v. *Illinois*, "[after] having taken into consideration the wide range of factors underlying the exercise of his sentencing function, nothing we now hold precludes a judge from imposing on an indigent, as on any defendant, the maximum penalty prescribed by law." 399 U.S., at 243.**

{***HR10} [10]
The decision to place the defendant on probation, however, reflects a determination by the sentencing court that the State's penological interests do not require imprisonment. See ***Williams* v. *Illinois, supra*, at 264** (Harlan, J., concurring); ***Wood* v. *Georgia*, 450 U.S. 261, 286-287 (1981)** {****21} (WHITE, J., dissenting). A probationer's failure to make reasonable efforts to repay his debt to society may indicate that this original determination needs reevaluation, and imprisonment may now be required to satisfy the

State's interests. But a probationer who has made sufficient bona fide efforts to pay his fine and restitution, and who has complied with the other conditions of probation, has demonstrated a willingness to pay his debt to society and an ability to conform his conduct {**2072} to social norms. The State nevertheless asserts three reasons why imprisonment is required to further its penal goals.

First, the State argues that revoking probation furthers its interest in ensuring that restitution be paid to the victims of crime. A rule that imprisonment may befall the probationer who fails to make sufficient bona fide efforts to pay restitution may indeed spur probationers to try hard to pay, thereby increasing the number of probationers who make restitution. Such a goal is fully served, however, by revoking probation only for persons who have not {***232} made sufficient bona fide efforts to pay. Revoking the probation of someone who through no fault of his {****22} own is unable to make restitution will not make restitution suddenly forthcoming. Indeed, {*671} such a policy may have the perverse effect of inducing the probationer to use illegal means to acquire funds to pay in order to avoid revocation.

Second, the State asserts that its interest in rehabilitating the probationer and protecting society requires it to remove him from the temptation of committing other crimes. This is no more than a naked assertion that a probationer's poverty by itself indicates he may commit crimes in the future and thus that society needs for him to be incapacitated. We have already indicated that a sentencing court can consider a defendant's employment history and financial resources in setting an initial punishment. Such considerations are a necessary part of evaluating the entire background of the defendant in order to tailor an appropriate sentence for the defendant and crime. But it must be remembered that the State is seeking here to use as the *sole* justification for imprisonment the poverty of a probationer who, by assumption, has demonstrated sufficient bona fide efforts to find a job and pay the fine and whom the State initially thought {****23} it unnecessary to imprison. Given the significant interest of the individual in remaining on probation, see ***Gagnon* v. *Scarpelli, supra; Morrissey* v. *Brewer*, 408 U.S. 471 (1972)**, the State cannot justify incarcerating a probationer who has demonstrated sufficient bona fide efforts to repay his debt to society, solely by lumping him together with other poor persons and thereby classifying him as dangerous. n11 This would be little more than punishing a person for his poverty.

- - -Footnotes- - -

n11 The State emphasizes several empirical studies suggesting a correlation between poverty and crime. *E. g.*, Green, Race, Social Status, and Criminal Arrest, 35 Am. Sociological Rev. 476 (1970); M. Wolfgang, R. Figlio, & T. Sellin, Delinquency in a Birth Cohort (1972).

- - -End Footnotes- - -

Third, and most plausibly, the State argues that its interests in punishing the lawbreaker and deterring others from criminal behavior require it to revoke probation for failure to pay a fine or restitution. The State clearly has {****24} an interest in punishment and deterrence, but this interest can often be {*672} served fully by alternative means. As we said in ***Williams*, 399 U.S., at 244,** and reiterated in ***Tate*, 401 U.S., at 399,** "[the] State is not powerless to enforce judgments against those financially unable to pay a fine." For example, the sentencing court could extend the time for making payments, or reduce the fine, or direct that the probationer perform some form of labor or public service in lieu of the fine. Justice Harlan appropriately observed in his concurring opinion in *Williams* that "the deterrent effect of a fine is apt to derive more from its pinch on the purse than the time of payment." **399 U.S., at 265.** Indeed, given the general flexibility of tailoring fines to the resources of a defendant, or even permitting the defendant to do specified work to satisfy the fine, see ***Williams, supra*, at 244, {***233} n. 21,** a sentencing court can often establish a reduced fine or alternative public service in lieu of a fine that adequately serves the State's goals of punishment and deterrence, given the defendant's diminished {****25} financial resources. {**2073} Only if the sentencing court determines that alternatives to imprisonment are not adequate in a particular situation to meet the State's interest in punishment and deterrence may the State imprison a probationer who has made sufficient bona fide efforts to pay.

{***HR11} [11]
{***HR12} [12]
{***HR13} [13]
We hold, therefore, that in revocation proceedings for failure to pay a fine or restitution, a sentencing court must inquire into the reasons for the failure to pay. If the probationer willfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay, the court may revoke probation and sentence the defendant to imprisonment within the authorized range of its sentencing authority. If the probationer could not pay despite sufficient bona fide

efforts to acquire the resources to do so, the court must consider alternative measures of punishment other than imprisonment. Only if alternative measures are not adequate to meet the State's interests in punishment and deterrence may the court imprison a probationer who has made sufficient bona fide efforts to pay. To do otherwise would deprive the probationer of his conditional freedom simply {*673} {****26} because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment. n12

- - -Footnotes- - -

n12

{***HR8B} [8B]
As our holding makes clear, we agree with JUSTICE WHITE that poverty does not insulate a criminal defendant from punishment or necessarily prevent revocation of his probation for inability to pay a fine. We reject as impractical, however, the approach suggested by JUSTICE WHITE. He would require a "good-faith effort" by the sentencing court to impose a term of imprisonment that is "roughly equivalent" to the fine and restitution that the defendant failed to pay. *Post*, at 675. Even putting to one side the question of judicial "good faith," we perceive no meaningful standard by which a sentencing or reviewing court could assess whether a given prison sentence has an equivalent sting to the original fine. Under our holding the sentencing court must focus on criteria typically considered daily by sentencing courts throughout the land in probation revocation hearings: whether the defendant has demonstrated sufficient efforts to comply with the terms of probation and whether nonimprisonment alternatives are adequate to satisfy the State's interests in punishment and deterrence. Nor is our requirement that the sentencing court consider alternative forms of punishment a "novel" requirement. In both *Williams* and *Tate*, the Court emphasized the availability of alternative forms of punishment in holding that indigents could not be subjected automatically to imprisonment.

- - -End Footnotes- - -
{****27}

III

{***HR1B} [1B]
We return to the facts of this case. At the probation revocation hearing, the petitioner and his wife testified about their lack of income and assets and of his repeated efforts to obtain work. While the sentencing court commented on the availability of odd jobs such as lawnmowing, it made no finding that the petitioner had not made sufficient bona fide efforts to find work, and the record as it presently stands would not justify such a finding. This lack of findings is understandable, of course, for under the rulings of the Georgia Supreme Court n13 such an inquiry {***234} would have been irrelevant to the constitutionality of revoking probation. The State argues that the sentencing court determined that the petitioner was no longer a good probation risk. In the absence of a {*674} determination that the petitioner did not make sufficient bona fide efforts to pay or to obtain employment in order to pay, we cannot read the opinion of the sentencing court as reflecting such a finding. Instead, the court curtly rejected counsel's suggestion that the time for making the payments be extended, saying that "the fallacy in that argument" is that the petitioner has long known {****28} he had to pay the $ 550 and yet did not comply with the court's prior order to pay. App. 45. The sentencing judge declared that "I don't know any way to enforce the prior orders of the Court but one {**2074} way," which was to sentence him to imprisonment. *Ibid.*

- - -Footnotes- - -

n13 See cases cited in n. 5, *supra*.

- - -End Footnotes- - -

The focus of the court's concern, then, was that the petitioner had disobeyed a prior court order to pay the fine, and for that reason must be imprisoned. But this is no more than imprisoning a person solely because he lacks funds to pay the fine, a practice we condemned in *Williams* and *Tate*. By sentencing petitioner to imprisonment simply because he could not pay the fine, without considering the reasons for the inability to pay or the propriety of reducing the fine or extending the time for payments or making alternative orders, the court automatically turned a fine into a prison sentence.

{***HR14} [14]
We do not suggest by our analysis of the present record that the State may not place the petitioner in prison. {****29} If, upon remand, the Georgia courts

determine that petitioner did not make sufficient bona fide efforts to pay his fine, or determine that alternative punishment is not adequate to meet the State's interests in punishment and deterrence, imprisonment would be a permissible sentence. Unless such determinations are made, however, fundamental fairness requires that the petitioner remain on probation.

IV

The judgment is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

CONCURBY: WHITE

CONCUR: {*675} JUSTICE WHITE, with whom THE CHIEF JUSTICE, JUSTICE POWELL, and JUSTICE REHNQUIST join, concurring in the judgment.

We deal here with the recurring situation where a person is convicted under a statute that authorizes fines or imprisonment or both, as well as probation. The defendant is then fined and placed on probation, one of the conditions of which is that he pay the fine and make restitution. In such a situation, the Court takes as a given that the State has decided that imprisonment is inappropriate because it is unnecessary to achieve its penal objectives. But that is true only if the defendant pays the fine and makes restitution {****30} and thereby suffers the financial penalty that such payment entails. Had the sentencing judge been quite sure that the defendant could not pay the fine, I cannot believe that the court would not have imposed some jail time or that either the Due Process {***235} or Equal Protection Clause of the Constitution would prevent such imposition.

Poverty does not insulate those who break the law from punishment. When probation is revoked for failure to pay a fine, I find nothing in the Constitution to prevent the trial court from revoking probation and imposing a term of imprisonment if revocation does not automatically result in the imposition of a long jail term and if the sentencing court makes a good-faith effort to impose a jail sentence that in terms of the State's sentencing objectives will be roughly equivalent to the fine and restitution that the defendant failed to pay. See ***Wood* v. *Georgia*, 450 U.S. 261, 284-287 (1981)** (WHITE, J., dissenting).

The Court holds, however, that if a probationer cannot pay the fine for reasons not of his own fault, the sentencing court must at least consider alternative measures of punishment other than imprisonment, and {****31} may imprison the probationer only if the alternative measures are deemed inadequate to meet the State's interests in punishment and deterrence. {*676} *Ante*, at 672-673. There is no support in our cases or, in my view, the Constitution, for this novel requirement.

The Court suggests, *ante*, at 673, n. 12, that if the sentencing court rejects nonprison alternatives as "inadequate," it is "impractical" to impose a prison term roughly equivalent to the fine in terms of achieving punishment goals. Hence, I take it, that had the trial court in this case rejected nonprison alternatives, the sentence it imposed would be constitutionally impregnable. Indeed, there would be no {**2075} bounds on the length of the imprisonment that could be imposed, other than those imposed by the Eighth Amendment. But ***Williams* v. *Illinois*, 399 U.S. 235 (1970)**, and ***Tate* v. *Short*, 401 U.S. 395 (1971)**, stand for the proposition that such "automatic" conversion of a fine into a jail term is forbidden by the Equal Protection Clause, and by so holding, the Court in those cases was surely of the view that there is a way of converting a fine into a jail {****32} term that is not "automatic." In building a superstructure of procedural steps that sentencing courts must follow, the Court seems to forget its own concern about imprisoning an indigent person for failure to pay a fine.

In this case, in view of the long prison term imposed, the state court obviously did not find that the sentence was "a rational and necessary trade-off to punish the individual who [possessed] no accumulated assets", ***Williams* v. *Illinois, supra*, at 265** (Harlan, J., concurring). Accordingly, I concur in the judgment.

Ex Parte Preston A. Tate

No. 42,209

Court of Criminal Appeals of Texas

471 S.W.2d 404; 1971 Tex. Crim. App. LEXIS 1566

October 6, 1971

PRIOR HISTORY: {**1}

Appeal from Harris County

COUNSEL: Appellant: Peter Navarro; Houston, Texas Roy Lucas; New York, New York, Houston, Texas.

Appellee: Carol Vance, D. A.; Houston, Texas.

JUDGES: Morrison, Judge.

OPINIONBY: MORRISON

OPINION: {*405} ON MOTION FOR REHEARING

The original opinion is withdrawn and the following is substituted in lieu thereof.

This is an appeal from the refusal of the County Criminal Court at Law No. 1 of Harris County, Texas, to grant the appellant's relief prayed for in his application for writ of habeas corpus. This cause has been remanded to this Court by the United States Supreme Court with directions to proceed in accordance with its opinion. See **Tate v. Short, 401 U.S. 395, 28 L. Ed. 2d 130, 91 S. Ct. 668,** and **Ex Parte Tate, 445 S.W.2d 210** for the previous opinions in this cause.

In this cause the United States Supreme Court said that Tate may not be imprisoned because he is too poor to pay his accumulated traffic fines. In doing so they stated:

"There are, however, other alternatives to which the State may constitutionally resort to serve its concededly valid interest in enforcing payment of fines. We repeat our observation in Williams in that regard, {**2} **399 U.S. at 244-245,** (footnotes omitted): "'The State is not powerless to enforce judgments against those financially unable to pay a fine; indeed, a different result would amount to inverse discrimination since it would enable an indigent to avoid both the fine and imprisonment {*406} for nonpayment whereas other defendants must always suffer one or the other conviction.' ". . . . We emphasize that our holding today does not suggest any constitutional infirmity in imprisonment of a defendant with the means to pay a fine who refuses or neglects to do so. Nor is our decision to be understood as precluding imprisonment as an enforcement method when alternative means are unsuccessful despite the defendant's reasonable efforts to satisfy the fines by those means; the determination of the constitutionality of imprisonment in that circumstance must await the presentation of a concrete case. "The judgment of the Court of Criminal Appeals of Texas is reversed and the case is remanded for further proceedings not inconsistent with this opinion."

It now appears that the Legislature has provided "alternative means" for collection of fines and costs from defendants, in {**3} their revisions of Arts. 42.15, 43.03, 43.04, 43.05, 45.50, 45.51 and 45.52, V.A.C.C.P. This Court has discussed the impact of these amendments on persons currently confined under the old versions of the statutes in **Ex Parte Scott, 471 S.W.2d 54,** No. 44,123 (6-23-71). As this Court said in Scott:

"Under these amendments, the trial court may, when a defendant is to be fined, order the defendant to pay the entire fine and costs at the time of the pronouncement of sentence, order the defendant to pay the entire fine and costs at a later date, or order the defendant to pay specified portions of the fine and costs at designated intervals. The old statutes did not provide for delayed or installment payments; they required that the defendant pay the entire fine in a lump sum at the time of sentence or go to jail until he paid. "The new amendments are not ex post facto laws as regards their application to the appellant. A law which changes the punishment for a crime after the crime has been committed is an ex post facto law as prohibited by TEX. CONST., Art. I, Sec. 16 and U.S. CONST., Art. I, Sec. 10, only if it inflicts a greater punishment than did the previous law. **Rooney** {**4} **v. North Dakota, 196 U.S. 319, 49 L. Ed. 494, 25 S. Ct. 264; Hill v. State, 158 Tex. Crim. 313, 256 S.W.2d 93; Millican v. State, 145 Tex. Crim. 195, 167 S.W.2d 188.** Compare **In re Hunt, 28 Tex. Civ. App. 361, 13 S.W. 145; Ex Parte Alegria, Tex., 464 S.W.2d 868;** and **Donald v. Jones, 445 F.2d 601** (5th Cir. 1971, No. 30,389). In the case at bar, the punishment has not been substantially altered; the only change has occurred in the method of collection of the

fine and costs. This change has the effect of mitigating the punishment, because it makes it easier for a defendant to pay his fines. In the case at bar it means that the petitioner probably need not be imprisoned as it appears that he can pay the remainder of his fine and costs if he is allowed to do so on an installment or deferred payment basis."

This cause is remanded to County Court at Law No. 1 of Harris County, Texas, for further proceeding as may be consistent with the opinion of the Supreme Court of the United States and this opinion and so that the benefits of our legislative revisions may be complied with. n1

- - -Footnotes- - -

n1 Compare **Spurlock v. Noe, 467 S.W.2d 320, 9 Cr.L. 2212 (Ky.Ct.App. 1971).**

- - -End Footnotes- - -
{**5}

It is so ordered.

Ex parte Rafael MINJARES, Jr

No. 57136

COURT OF CRIMINAL APPEALS OF TEXAS

582 S.W.2d 105; 1979 Tex. Crim. App. LEXIS 1360

March 23, 1979

SUBSEQUENT HISTORY: {**1}

Originally published at **576 S.W.2d 645.** Withdrawn from bound volume publication.

COUNSEL: W. Stephen Hernsberger, El Paso, court appointed, for appellant.

JUDGES: Before ONION, P. J., and DOUGLAS and ODOM, JJ.

Before the Court en banc.

OPINIONBY: ODOM

OPINION: {*108} OPINION ON PETITIONER'S MOTION FOR REHEARING

The Court on its own motion has withdrawn during term time the mandate issued in this cause, and has withdrawn the original opinion on petitioner's motion for rehearing and substitutes the following in lieu thereof.

This is an appeal from an order entered in the County Court at Law of El Paso County denying relief on petitioner's application for habeas corpus.

On September 23, 1977, petitioner was convicted in the Municipal Court of El Paso on nine traffic complaints. n1 Total of fines and costs in those cases was $ 788 with the highest single case being a $ 200 fine and $ 2.50 costs. The Municipal Court ordered petitioner committed to the custody of the Chief of Police until the $ 788 judgment "is fully paid or until he is otherwise legally discharged by the due course of law." By contract with the city, the sheriff had custody of petitioner and held him in the county {**2} jail for 62 days before the hearing in county court on petitioner's writ was held, at the conclusion of which petitioner was released on bail pending disposition of this appeal. Stipulations at the hearing showed petitioner received $ 5 per day credit against his fines plus $ 2.50 per day good time credit, for a total of $ 465 credit against the $ 788 judgment.

- - -Footnotes- - -

n1. Although nine were stipulated, only seven were set out.

- - -End Footnotes- - -

Petitioner's contention on original submission was that under Article 5118a, V.A.C.S., he was entitled to discharge from custody when he had earned credit sufficient to discharge the largest single fine levied against him. On original submission the court disposed of the issue this way:

> "We conclude that petitioner is not entitled to the relief requested. Judgments in misdemeanor convictions imposing pecuniary fines as punishment have been held not concurrent but cumulative. In **Ex parte Hall (158 Tex.Cr.R. 646), 258 S.W.2d 806 (Tex.Cr.App.1953)** fines were assessed in seven cases. {**3} This Court held that the judgments against the defendant in each of the seven cases were independent of one another, that they could not be discharged concurrently, and that the defendant's satisfaction of the fine and costs in one of the seven judgments was not a satisfaction of the fine and costs in either or all of the other judgments."

Petitioner argues this holding is in conflict with this language from Article 5118a, supra:

> "This Act shall be applicable regardless of whether the judgment of conviction is a fine or jail sentence or a combination of jail sentence and fine. A prisoner under two (2) or more cumulative sentences shall be allowed commutation As if they were all one sentence." (Emphasis added.)

Petitioner rests his position on the emphasized language, arguing that treating all $ 788 worth of fines as one "sentence" renders a punishment in excess of the maximum allowed within the jurisdiction of the Municipal Court. That position misconstrues the statute: Art. 5118a does not transform petitioner's nine fines into one; it merely provides that for Commutation purposes of the statute the fines are to be treated As if they were one. Thus, for fines and {**4} cumulated jail terms, good time credits cannot be earned concurrently against Each fine or jail term, but to the

contrary, treating them as one, good time credits can be earned only against the aggregate punishment. We adhere to the disposition of this issue reached on original submission.

In our opinion on original submission we also went beyond the issue raised by petitioner and held Art. 5118a, supra, does not apply to Municipal Court judgments. We therefore held petitioner could not be awarded $ 2.50 per day good time credit against his fines. That issue had not been raised and had the effect of reducing petitioner's credits for his 62 days' confinement from $ 465 to $ 310. Appellant challenges that holding and urges the above quoted language from Art. 5118a as authority for {*109} the proposition that good time credits should be awarded "regardless of whether the judgment of conviction is a fine or jail sentence or a combination of jail sentence and fine." We agree that the absence of a formal sentence in Municipal Court prosecutions should not render Art. 5118a inapplicable.

Our holding on original submission was based on a reading of a sentence taken out of context. {**5} Article 5118a provides in part:

"In order to encourage county jail discipline, a distinction may be made in the terms of prisoners so as to extend to all such as are orderly, industrious and obedient, comforts and privileges according to their deserts; the reward to be bestowed on prisoners for good conduct shall consist of such relaxation of strict county jail rules, and extension of social privileges as may be consistent with proper discipline. Commutation of time for good conduct, industry and obedience may be granted the inmates of each county jail by the sheriff in charge. A deduction in time not to exceed one third (1/3) of the original sentence may be made from the term or terms of sentences when no charge of misconduct has been sustained against the prisoner. This Act shall be applicable regardless of whether the judgment of conviction is a fine or jail sentence or a combination of jail sentence and fine. . . ."

The opinion on original submission relied heavily upon the use of the word "sentence" in the next to last sentence quoted above, and concluded that because there is no "sentence" in Municipal Court convictions, n2 the statute does not apply. The language {**6} immediately following the excerpt previously relied on states that the statute applies "regardless of whether the judgment of conviction is a fine or jail sentence or a combination of jail sentence and fine." The sentence before says it applies to "the inmates of each county jail." We hold petitioner is entitled to such good time credits as he had earned while an inmate of the county jail, and the absence of a formal sentence may not be used to deny him that credit. On the record before us petitioner has credits of $ 465 toward discharge of his $ 788 of fines and costs.

- - -Footnotes- - -

n2. See **Article 42.02**, V.A.C.C.P.

- - -End Footnotes- - -

We have found further grounds not raised in the briefs that entitle petitioner to immediate discharge from custody. In the record appears an order of the judge who heard petitioner's writ application. The order recites that after a hearing petitioner was found to be indigent. It is a matter of constitutional law that a defendant "may not be imprisoned because he is too poor to pay his accumulated traffic {**7} fines." **Ex parte Tate, Tex.Cr.App., 471 S.W.2d 404; Tate v. Short, 401 U.S. 395, 91 S. Ct. 668, 28 L. Ed. 2d 130.**

On remand the County Court at Law from which this appeal was prosecuted shall (1) determine the cause numbers of the Municipal Court cases, (2) set aside the commitment to custody issued by the Municipal Court, and (3) remand petitioner to the Municipal Court for execution of the judgments on the fine and costs remaining due by arrangement in the Municipal Court of a schedule of payments or other means legally authorized. See Articles 42.15, 43.07, 45.06, 45.50, 45.52(b), V.A.C.C.P. See also **Ex parte Sheppard, Tex.Cr.App., 548 S.W.2d 414.** Petitioner is entitled to credit for $ 465.00 against the $ 788 total assessed in those cases.

Petitioner's motion for rehearing is granted, the order of the County Court at Law denying relief is set aside, and the cause is remanded to the County Court at Law for further proceedings in conformity with this opinion.

It is so ordered.

DISSENTBY: DOUGLAS

DISSENT: DOUGLAS, Judge, dissenting.

The opinion on original submission was correct.

The majority opinion leaves the impression that there is no difference between a judgment and a sentence {**8} and treats them as the same. In **Ex parte Hayden, 152 Tex.Cr.R. 517, {*110} 215 S.W.2d 620 (1948),** the Court wrote, " "Judgment' and "sentence' are not the same thing; the two are distinct and independent. . . ." In that case the convictions were for misdemeanor offenses. The trial court granted probation and ordered the relators discharged. The sheriff refused to discharge them and the habeas corpus proceeding followed.

Under consideration was a Texas constitutional provision, Section 11-A of Article 4, which provides:

"The Courts of the State of Texas having original jurisdiction of criminal actions shall have the power, after conviction, to Suspend the imposition or execution of sentence and to place the defendant upon probation and to reimpose such sentence, under such conditions as the Legislature may prescribe." (Emphasis supplied).

House Bill No. 120, Chapter 452, Acts of the 50th Legislature, Regular Session, page 1049, Vernon's Annotated Code of Criminal Procedure, **Article 781b**, authorized probation in misdemeanor cases. At that time there were no sentences imposed in any misdemeanor cases. This Court held that since the constitutional provision allowing {**9} probation referred only to sentences it did not apply to misdemeanor cases because in those only judgments were entered. See **Ex parte Waggoner, 276 S.W.2d 106 (Tex.Cr.App.1954).**

In **Gilderbloom v. State, 160 Tex.Cr.R. 471, 272 S.W.2d 106 (1954),** the Court noted that **Ex parte Hayden, supra,** held that the adult probation law had no application except in those cases where a sentence had been made mandatory by the Legislature and followed that case. Neither case has been overruled.

As construed by this Court thirty years ago and until this case, there is a great difference between a judgment and a sentence.

Following the Hayden and other cases, relator was not entitled to have the judgments treated as one sentence. This Court held the statute that treated the judgment as a sentence was unconstitutional.

The majority apparently thinks it bad that the original opinion discussed something not raised in appellant's brief. The writer knows of no rule that this Court is bound by any brief in discussing the law applicable to a case. If discussing a matter not raised in the brief is wrong, why does the majority discuss the question of indigency which was not raised in appellant's brief? {**10}

The writer of the majority opinion has often discussed matters not raised by the brief. One interesting example is found in **Lechuga v. State, 532 S.W.2d 581 (Tex.Cr.App.1975).** In that case the trial court found the defendant guilty and assessed punishment at three years' confinement. At the defendant's request a motion for new trial was granted. The same judge then assessed punishment at five years, probated. Lechuga was apparently happy to get it because he did not appeal. After probation was granted, Lechuga committed several crimes and because of these his probation was revoked. He appealed from the order revoking probation. The majority of the then five judge Court held that the punishment of five years' probation was more than three years' confinement in the Department of Corrections and reversed the conviction. This was a matter not raised in the brief.

When a federal prisoner is placed in a county jail, he is still a federal prisoner. Can the sheriff give him credit for good time?

When a city prisoner is placed in a county jail for an unpaid fine, he is still a city prisoner. Under the majority ruling a double standard is created. One in custody for a fine set {**11} in a municipal court and who is confined in a city jail does not get good time credit from the sheriff. Where, as in this case, there is a contract with a county to handle prisoners for a city until their fines are paid, the majority allows good time credit not allowed to the vast majority of those convicted in city courts because they are in different jails. Should a city prisoner in a county jail have more rights than a city prisoner in a city jail?

{*111} For the reasons stated in the opinion on original submission and here, the relief sought should be denied.

EX PARTE JAMES M. HANNINGTON

NO. 71,449

COURT OF CRIMINAL APPEALS OF TEXAS

832 S.W.2d 355; 1992 Tex. Crim. App. LEXIS 130

June 3, 1992, DELIVERED

PRIOR HISTORY: {**1}

Habeas Corpus Application from BEXAR County

COUNSEL: Attorney(s) for applicant, Charlotte K. Lang, Huntsville, Tx.

Attorney(s) for State, Robert Huttash, State's Attorney, Austin, Tx.

OPINIONBY: PER CURIAM

OPINION: {*355} OPINION

This is a post-conviction application for a writ of habeas corpus filed pursuant to Article 11.07, § 2, V.A.C.C.P. Applicant was convicted of the offense of theft and two cases of credit card abuse. He was sentenced to ten years in the penitentiary in Case No. 89-CR-5,249 (theft) and given credit for 48 days in jail; six years in Case No. 87-CR-3,766 (credit card abuse) and given credit for 56 days in jail; and six more years in Case No. 87-CR-2,073 (credit card abuse) and was given credit for 69 days in jail. The sentence in Case No. 87-CR-3,766 is to be served consecutively to the sentence in Case No. 89-CR-5,249 and the sentence in Case No. 87-CR-2,073 is to be served consecutively to the sentence in Case No. 87-CR-3,766. Applicant now contends that the Texas Department of Criminal Justice, Institutional Division, is improperly refusing to credit him with all periods in confinement prior to sentencing in each cause.

Article 42.03, § 2(a), {**2} V.A.C.C.P., provides that a defendant shall be given credit on his sentence for the time he has spent in jail in that cause from the time of his arrest and confinement until he was sentenced by the trial court. Art. 42.18 § 8(b), V.A.C.C.P., now requires that parole eligibility shall be calculated separately for each sentence when a prisoner is sentenced to consecutive felony sentences under **Art. 42.08**, V.A.C.C.P. However, the bill enacting this provision mandated that it would apply only where all elements of each of the offenses for which the consecutive sentences were imposed were committed on or after September 1, 1987. Acts 1987, 70th Leg., ch. 384, § 8. When consecutive sentences are not affected by the 1987 amendment to Art. 42.18, § 8(b), V.A.C.C.P., the sentences are added together and treated as one sentence. See Art. 6181-1, V.A.C.S. (repealed 1989). n1

- - -Footnotes- - -

n1 As the convictions in the two 1987 cases are for offenses which occurred before the effective date of the 1987 amendment, Applicant's case is not affected by such amendment.

- - -End Footnotes- - -

{**3}

{*356} **Ex parte Bynum, 772 S.W.2d 113 (Tex.Cr.App. 1989),** held that where these amendments to Art. 42.18, § 8(b) do not apply, an individual is entitled to credit on both sentences for periods a detainer was lodged pretrial for one offense while the defendant was incarcerated on the other, if the sentences were subsequently ordered to be served consecutively. Bynum rejected the State's contention that such a construction effectively awarded a prisoner double credit when he had only served one period in custody.

Records reflect that the Texas Department of Criminal Justice, Institutional Division, is interpreting Bynum as applying only where a detainer has been lodged. Bynum requires that credit be given for all time in jail prior to sentence in each cause, as required by Art. 42.03, § 2, even if the effect is to give "double credit" when the sentences are consecutive and the prisoner was detained on more than one cause at the same time. The existence of a detainer is merely one means of establishing incarceration on a particular cause. No formal detainer is required if it is established by some other means that the prisoner was detained in that cause, **Ex parte {**4} Kuban, 763 S.W.2d 426 (Tex.Cr.App. 1989),** and Bynum was not limited to detainer situations.

In this case, Applicant's sentences have been cumulated, and the 1987 amendments of Art. 42.18, § 8(b) do not apply because the offenses in two credit card abuse cases were committed before September 1,

1987. Therefore, credit for all time in jail prior to sentence in each cause should also be cumulated. No "double credit" is required, however, for periods subsequent to the date of sentencing. n2

- - -Footnotes- - -

n2 All three convictions were entered on the same date.

- - -End Footnotes- - -

The record in this case affirmatively supports Applicant's contentions, and he is entitled to relief. He is being credited with an average of the jail credit given in the three different cases. Applicant is entitled to 173 days of jail credit, but has only been given credit for 58 days. Accordingly, the Texas Department of Criminal Justice, Institutional Division shall add the total pretrial credits in each cause then apply the total to the date of sentencing {**5} for the theft conviction to determine Applicant's appropriate "sentence begin date." A similar procedure shall be followed to determine the sentence begin date in all future cases involving similar facts.

Copies of this opinion shall be sent to the Texas Department Criminal Justice, Institutional and Board of Pardons and Paroles Divisions.

PER CURIAM

DELIVERED: JUNE 3, 1992

FUNDED BY A GRANT FROM THE
TEXAS COURT OF CRIMINAL APPEALS

TEXAS MUNICIPAL COURTS EDUCATION CENTER

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FAX (512) 320-0996

PRO SE DEFENDANTS

Presented by

C. Victor Lander
Municipal Judge
City of Dallas

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

1. Recognize the special needs of a defendant not represented by counsel.
2. Explain court procedures and options to a defendant while avoiding *ex parte* communications.
3. Identify steps to preserve the right to a fair trial for all parties in a criminal case.
4. Identify the stages of a trial.

Handling Pro Se Defendants



Presented by:

Judge C. Victor Lander
City of Dallas Municipal Court

Out of Court Procedures In Pro Se Defendant Cases

TAKING OF PLEAS BY CLERK OR JUDGE

- DO NOT GIVE LEGAL ADVICE YOURSELF OR ALLOW CLERKS OR STAFF TO GIVE LEGAL ADVICE.
- THE PLEA FROM THE PRO SE DEFENDANT SHOULD BE ONE OF THREE:

  GUILTY,

  NOT GUILTY, OR

  NO CONTEST --- ONLY.

- IF THE PLEA IS GUILTY OR NO CONTEST, ENSURE THAT THE PLEA IS FREELY ENTERED, WITH KNOWLEDGE OF CONSEQUENCES OF THE PLEA, AND THAT IT IS ENTERED BY THE DEFENDANT HIMSELF OR HERSELF ONLY.
- IF PLEA IS NOT GUILTY, TRIAL SHOULD BE SET AT FIRST AVAILABLE OPPORTUNITY, AND PRO SE DEFENDANT ADVISED OF RIGHTS PRIOR TO TRIAL.

CONVERSATIONS WITH THE JUDGE OUTSIDE OF THE COURTROOM ARE STILL COURT PROCEEDINGS

- OUT OF COURT DISCUSSIONS BETWEEN THE JUDGE AND PRO SE DEFENDANTS SHOULD BE DISCOURAGED AND AVOIDED.
- OUT OF COURT DISCUSSIONS OR CONVERSATIONS WITH A PRO SE DEFENDANT SHOULD BE AS GENERAL AND INFORMATIVE AS POSSIBLE.

- JUDGE SHOULD IMMEDIATELY MAKE A WRITTEN RECORD OF ANYTHING SAID IN ANY CONVERSATION WITH A PRO SE DEFENDANT OUT OF COURT.
- ANY OUT OF COURT DISCUSSIONS SHOULD ALWAYS BE IN THE PRESENCE OF BOTH PARTIES, PRO SE DEFENDANT AND COUNSEL FOR THE STATE, AND ADVISE PRO SE DEFENDANT OF EX PARTE RULES.

Judge's Responsibilities in Pro Se Defendant Trials

ENSURE THAT DEFENDANT RECEIVES A FAIR TRIAL, WITHOUT PREJUDICING STATE.

ENSURE THAT DEFENDANT IS NOT UNDULY HARMED OR HELPED BY PROCEEDING PRO SE.

ENSURE THAT DEFENDANT UNDERSTANDS THE PROCEEDINGS FULLY AND KNOWS HOW TO PARTICIPATE PROPERLY.

ENSURE THAT RULES OF EVIDENCE AND PROCEDURE ARE FOLLOWED (EVEN IN NON-RECORD COURTS).

ENSURE THAT PROPER DECORUM IS MAINTAINED THROUGHOUT TRIAL.

ENSURE THAT ALL QUESTIONS OF LAW ARE ANSWERED AND RULED UPON FAIRLY.

IN JURY TRIALS, ENSURE THAT ALL QUESTIONS OF FACT ARE SUBMITTED TO THE JURY.

ENSURE THAT JUDGE MAKES NO STATEMENT OR ACTION (OR BODY LANGUAGE) THAT WOULD LEAD TO BELIEF THAT JUDGE IS FAVORING OR DISFAVORING DEFENDANT.

ENSURE THAT JUDGMENT OF THE COURT IS FAIR AND UNBIASED, AND NOT BASED ON SYMPATHY FOR NOR ANIMOSITY AGAINST DEFENDANT FOR PROCEEDING PRO SE.

Rights of a Pro Se Defendant

ABSOLUTE RIGHT TO PROCEED PRO SE, WITHOUT ATTORNEY

RIGHT TO BE REPRESENTED BY COUNSEL

RIGHT TO TESTIFY AND THE RIGHT NOT TO TESTIFY

RIGHT TO EXAMINE COMPLAINT BEFORE TRIAL AND TO OBJECT TO COMPLAINT

RIGHT TO HEAR ALL TESTIMONY INTRODUCED IN EVIDENCE AGAINST DEFENDANT

RIGHT TO CROSS-EXAMINE ALL STATE WITNESSES

RIGHT TO CALL AND EXAMINE ANY DEFENSE WITNESSES AND TO PRESENT DEFENSE EVIDENCE

RIGHT TO HAVE THE COURT SUBPOENA DEFENSE WITNESSES OTHERWISE RELUCTANT TO TESTIFY

RIGHT TO OBJECT TO QUESTIONS (FOR LEGAL GROUNDS)

RIGHT TO MAKE CLOSING ARGUMENT

Rights of Pro Se in Jury Trials

RIGHT TO VOIR DIRE JURY PANEL

RIGHT TO MAKE PEREMPTORY JUROR STRIKES (USUALLY THREE)

RIGHT TO REQUEST COURT TO STRIKE JURORS FOR CAUSE (UNLIMITED NUMBER)

RIGHT TO ASK COURT FOR BENCH CONFERENCES (OUTSIDE THE PRESENCE OF THE JURY) ON QUESTIONS OF LAW

RIGHT TO MAKE JURY-RELATED MOTIONS (MOTION TO SHUFFLE, CHALLENGE TO THE ARRAY, BATSON MOTION, etc)

Basic Admonitions to Pro Se Defendants

YOU HAVE THE RIGHT TO TESTIFY OR NOT TO TESTIFY, THAT IS YOUR CHOICE.

IF YOU CHOOSE TO TESTIFY, ANYTHING YOU SAY CAN BE USED AGAINST YOU.

IF YOU CHOOSE NOT TO TESTIFY, THAT FACT ALONE CANNOT BE USED AGAINST YOU.

YOU HAVE THE RIGHT TO CALL WITNESSES OF YOUR OWN TO TESTIFY, AND YOU HAVE THE RIGHT TO HAVE THE COURT ORDER SUBPOENAS TO COMPEL THE APPEARANCE IN COURT OF WITNESSES WHO WOULD BE IN YOUR FAVOR.

YOU ALSO HAVE THE RIGHT TO CROSS-EXAMINE ANY WITNESSES PRESENTED BY THE PROSECUTION.

ON CROSS-EXAMINATION, YOU MAY ONLY ASK QUESTIONS OF THE WITNESSES BASED ON THEIR TESTIMONY FROM THE WITNESS STAND.

YOU MAY NOT ARGUE WITH THE WITNESS OR MAKE ANY STATEMENT AT THAT TIME, YOU MAY ONLY ASK QUESTIONS.

THE PROSECUTION HAS THE RIGHT TO OBJECT IF YOU ATTEMPT TO MAKE A STATEMENT OR ARGUE WITH THE WITNESSES DURING CROSS-EXAMINATION.

YOU MAY MAKE A STATEMENT TO THE COURT (OR JURY) ONLY IF YOU TAKE THE STAND TO TESTIFY.

AS PREVIOUSLY STATED, YOU HAVE THE RIGHT TO TESTIFY OR NOT TO TESTIFY, AND IF YOU DO TESTIFY, YOU MAY BE CROSS-EXAMINED.

THE STATE HAS THE BURDEN OF PROOF, AND IT HAS TO PROVE YOUR GUILT BEYOND A REASONABLE DOUBT.

YOU ARE NOT OBLIGATED TO PRESENT ANY EVIDENCE AT ALL, IF YOU CHOOSE NOT TO.

IF YOU DO NOT PRESENT ANY EVIDENCE OR CALL ANY WITNESSES, AND IF YOU DO NOT TESTIFY, THE DECISION WILL BE MADE BASED SOLELY ON THE TESTIMONY PRESENTED BY THE PROSECUTION.

Why is Any of This Important?

Birdwell v. State, 10 S.W.3d 74 (Tex.App.-Hous. (14th Dist) 1999).

Once the right to self-representation has been asserted in a timely manner, namely, before the jury is empaneled, the trial judge is obliged to make the accused aware of the consequences of self-representation.

Thereafter, if the accused maintains his desire to proceed pro se, he should be allowed to do so as long as the assertion of his right to self-representation is unconditional and not asserted to disrupt or delay trial proceedings.

Although an exercise of the right of self-representation may cause some inconvenience or even disruption in proceedings, so long as it is not a calculated obstruction, the delay cannot be used to deny the accused of the right to self-representation.

A defendant's clear and unequivocal request for self-representation, followed by an unmistakable denial of that right, is sufficient to preserve the alleged error.

Summary of Trial Procedures in Jury Trial Cases

- **JURY PANEL SEATED.**
- **PRETRIAL MOTIONS (SHUFFLE, CHALLENGE TO THE ARRAY).**
- **VOIR DIRE OF JURY PANEL (PROSECUTION, THEN DEFENSE).**

- **REQUESTS TO STRIKE FOR CAUSE, AND PEREMPTORY STRIKES.**

(NOTE - IF AFTER CAUSE STRIKES THERE ARE NOT ENOUGH JURORS REMAINING FOR 3 PEREMPTORY STRIKES FOR EACH SIDE, JURY PANEL IS BUSTED AND NEW JURY PANEL MUST BE CALLED UP).

- JURY SELECTED AND SWORN IN.
- PRELIMINARY INFORMATION GIVEN TO JURY BY JUDGE.
- PROSECUTION ANNOUNCES "READY".
- DEFENSE ANNOUNCES "READY".
- ALL PRE-TRIAL MOTIONS ENTERTAINED BY COURT.

- DEFENDANT IS ARRAIGNED (COMPLAINT READ).
- DEFENDANT PLEADS "NOT GUILTY" (OR REFUSES TO PLEA, WHICH IS ENTERED BY THE COURT AS A "NOT GUILTY" PLEA).

- WITNESSES ARE SWORN IN.
- WITNESSES ARE PLACED UNDER THE RULE (IF REQUESTED BY EITHER PROSECUTION OR DEFENSE).

- PROSECUTION MAKES OPENING STATEMENT TO JURY.
- DEFENSE MAKES OPENING STATEMENT TO JURY.

(NOTE: DEFENDANT CAN MAKE OPENING AT BEGINNING OF TRIAL, OR WAIVE OPENING STATEMENT UNTIL BEGINNING OF DEFENSE TESTIMONY, OR MAKE NO OPENING STATEMENT AT ALL).

- PROSECUTION CALLS WITNESSES AND OFFERS TESTIMONY AND EVIDENCE.
- DEFENDANT CROSS-EXAMINES PROSECUTION WITNESSES.
- REBUTTAL BY PROSECUTION.
- PROSECUTION RESTS.

- DEFENDANT MAKES DIRECTED VERDICT MOTION, IF ANY.
- DEFENDANT MAKES OPENING STATEMENT (IF DESIRED AND NOT ALREADY DONE).

- DEFENDANT CALLS WITNESSES AND OFFERS TESTIMONY AND EVIDENCE (AND TESTIFIES IF DESIRED).
- PROSECUTION CROSS-EXAMINES DEFENSE WITNESSES.
- REBUTTAL BY DEFENSE.
- DEFENSE RESTS.

- PROSECUTION OFFERS REBUTTAL WITNESSES, IF ANY.
- CROSS-EXAMINATION BY DEFENSE.
- REBUTTAL BY PROSECUTION.
- PROSECUTION RESTS AND CLOSES.
- DEFENSE CLOSES.

- CHARGE TO THE JURY IS PREPARED BY THE COURT AND SUBMITTED TO PROSECUTION AND DEFENDANT FOR REVIEW.
- CHANGES, IF ANY, TO CHARGE OFFERED BY PARTIES, RULED ON BY COURT.
- MOTIONS OF BOTH SIDES, IF ANY, HEARD BY THE COURT.
- JURY CHARGE IS READ TO JURY.

- FINAL (CLOSING) ARGUMENT BY PROSECUTION.
- FINAL (CLOSING) ARGUMENT BY DEFENDANT.
- FINAL REBUTTAL ARGUMENT BY PROSECUTION.

- JURY RETIRES TO DELIBERATE.
- JURY RETURNS WITH VERDICT.
- COURT ENTERS VERDICT AS JUDGMENT OF THE COURT.

- FINAL RESOLUTION:

  (1) IF VERDICT IS GUILTY, DEFENDANT IS NOTIFIED OF RIGHT AND PROCEDURE FOR APPEAL; OR

  (2) IF VERDICT IS NOT GUILTY, DEFENDANT IS DISCHARGED.

Summary

- Remember to use Handout "Introductory Statement" Before All Proceedings
- Be cautious regarding any Out of Court Proceedings, and Keep a Record
- Remember the Responsibilities of the Judge in Pro Se Defendant Proceedings

- Remember that Judges should protect the rights of Pro Se Defendants, as well as the rights of the State.
- Remember that the failure to grant a Pro Se Defendant the trial he or she wants is prima facie ***reversible error***

- Remember the trial procedure discussed and try to follow it exactly and faithfully
- Consider Using "Your Rights at Trial" Handout Script for any Pro Se Trials

Thank you for your attention



Feel free to call if there are questions
Judge C. Victor Lander
City of Dallas Municipal Court
214/670-5573/5576

Introduction

For most of you from smaller jurisdictions, Handling Pro Se Defendants is a topic that is probably one of the more important ones you will cover during this course, since most of you have to deal with pro se Defendants daily. The vast majority of Defendants, particularly in smaller cities, appear by themselves, either not being able to afford to hire a lawyer or just not wanting to, thinking that they can do what needs to be done in Court, just by "telling their story". Of course, we know that proceedings in Court are not that simple.

Also, and unfortunately, "Judge Judy" and the "Peoples Court", not to mention the O.J. case and the vast myriad of Court and trial television shows, fictional and real, have given many people the impression that they can "handle" a trial, particularly in a traffic or Class C misdemeanor case, where the punishment is by fine only. Again, this is a misimpression of the vast majority of the population.

You, as Judges, have a duty not only to ensure that justice is done, but to ensure that the justice meted out in your Court is fair to both sides. You have the competing interests to balance of the State, seeking to protect the public by having the Defendant convicted for the offense charged (actually, supposedly seeking justice as well), and the Defendant, seeking exoneration and vindication and to expose the officer for what the officer did to the Defendant during the traffic stop. The job is difficult enough without the Defendant representing him or her self.

A pro se Defendant has the absolute right to proceed pro se. He or she also has the absolute right to be represented by counsel. There is no right to be represented by anyone other than a licensed attorney or the pro se Defendant him or her self. Generally, as you all know, in criminal proceedings a Defendant has a right to counsel, and if he or she cannot afford counsel, a lawyer is

appointed by the Court. However, since proceedings in Municipal Court are those cases where the punishment is by fine only, the Defendant is not entitled to an appointed counsel. Thus the Defendant either retains an attorney or is self represented (pro se).

Pre-Trial

There are two major areas of dealing with pro se Defendants for most Courts represented here, pre-trial, or outside of Court, and trial, in the Courtroom. First, the Court, or the Clerks at the Court's direction, must deal with pro se Defendants outside of the Courtroom setting, prior to the trial, generally known as pre-trial. A procedure should be developed by the Judge for the Clerks or other support personnel to advise pro se Defendants of their options of either pleading not guilty and setting the case for either a Bench or Jury trial, or pleading guilty (or no contest) and waiving the right to trial. Either initial plea may be before the Judge or in the Clerk's office, but neither the Judge or the Clerks should ever give legal advice to the pro se Defendant, and as Judge, one of your responsibilities is to ensure that Clerks and support personnel do not give legal advice to a pro se Defendant. The Clerk should also verify that, if a guilty plea is being entered, it is actually being entered by the Defendant, him or herself, or by a person authorized to act for the Defendant, namely a lawyer.

The Judge is also responsible for reminding the Defendant that conversations with the Judge, even outside of Court, are "Court proceedings", and the Judge should be sure that such conversations are discouraged or at least kept at a minimum and made as general and informative in nature as possible. The Defendant must be advised of his or her right to retain counsel, and if he or she decides to proceed to trial pro se, he or she must waive the constitutional right to retain counsel in writing, and must be warned of the consequences of proceeding pro se. The Judge must be

satisfied that the Defendant understands the consequences of representing him or her self, and that he or she cannot have a friend or associate represent him or her unless that friend or associate is a licensed attorney. There is no right to lay representation, except self representation (pro se), and allowing a lay person to act as an attorney and represent a Defendant is permitting the unauthorized practice of law - a felony. This situation often arises in so-called Republic of Texas Defendant cases.

Likewise, a pro se Defendant cannot be afforded special treatment just because of being pro se. Someone who chooses to represent himself or herself cannot later complain of the lack of effective assistance of counsel. All of the rules of Court, the Rules of Evidence, the Rules of Procedure, the substantive law, the proper conduct of the trial, all apply with equal balance to the pro se Defendant the same as to the State and represented Defendants. The Judge must also be aware of the Defendant's possible ignorance of legal procedure and rules of evidence as the Judge seeks to maintain order in the Court - the balancing test previously referred to.

Trial

Once the Defendant has pled not guilty and the case is at the trial stage, the Judge must, in the interest of fairness and orderly proceedings, inform the pro se Defendant of matters that are likely to come up at trial.

- General procedure and steps in the trial;
    - Who goes first, and why
    - Burden of proof
    - Right of Defendant to review Complaint
    - Right to challenge Complaint
    - Right to enter plea in open Court

- Right to have witnesses subpoenaed
- Voir Dire and Jury selection;
- Opening Statements;
- Right to confront and examine prosecution witnesses;
- Right to present defenses and defense evidence;
- Right to testify and right not to testify;
- Right to request jury instructions;
- Closing argument; and
- Right to appeal and appeal procedures.

If the Defendant decides to testify, the Judge must inform him or her of the privilege against self incrimination, and the Defendant must waive his or her right not to testify before the Court can properly receive any testimony from the Defendant from the witness stand.

Sample warning:

"You have the constitutional right under both State and Federal law not to testify, and the fact that you do not testify cannot be held against you in any way. The prosecution is required to prove your guilt beyond a reasonable doubt, and you are not obliged to present any evidence. If you do testify, you may be cross examined, that is, asked questions by the prosecution on any matter relevant to the issues to be determined in this case. Do you understand that? And understanding that, do you still wish to testify?"

Conclusion

In the balancing act of Judge, you may not be the Defendant's advocate, but you may, in your discretion, guide the Defendant though the trial steps with information where you decide it is

appropriate. You must also maintain control of the proceedings. If the Defendant is unruly or disruptive, you should consider warning the Defendant, or even threatening the Defendant with contempt if the matter gets completely out of hand.

Handling the pro se Defendant may be one of the most difficult activities you encounter as a Judge, and it is a true test of patience, judicial temperament, and people skills.

Included in the handout as a separate supplement is a sample presentation to be given before trial begins to pro se Defendants. This presentation is based upon information prepared and used by Judge Charles Polk Player of the Dallas Municipal Court, to whom credit should go. You would be wise to use this presentation in all trials in which the Defendant is appearing pro se.

YOUR RIGHTS AT TRIAL

You have certain rights when your case is set for trial. You have the right to have a lawyer represent you or you may act as your own attorney and represent yourself (Pro Se). In representing yourself, you have all the rights of an attorney and all of the responsibilities. The Court (judge) will expect you to know the Texas Rules of Criminal Evidence, the Texas Code of Criminal Procedure, The Texas Criminal Code, or Traffic Code, and the proper conduct of an attorney in the courtroom. The Court cannot assist you in these matters when the trial starts. Be aware that you are opposed by an assistant city attorney who is a prosecutor and conducts criminal trials five days a week.

Proceedings in court begin with a written complaint. You have a right to examine this complaint before trial. You are entitled to hear all testimony introduced against you. You have the right to cross-examine any and all witnesses who testifies against you. On cross-examination you may only ask questions on the facts and circumstances concerning the violation. You cannot argue with the witness or make any statement — you can only ask questions. You can make your statements if you take the stand and testify. You have the right to testify and the right not to testify. If you do not testify, your silence cannot be used against you in determining your innocence or guilt of the charge.

After the prosecution has completed its case, you may present your case. You have the right to call witnesses and have the right for the court to issue subpoenas to be sure they appear at trial.

(Your request for subpoenas must be made well in advance of the trial.) Your witness can only testify about matters of which they have personal knowledge. The prosecution has the right to cross-examine your witnesses. If you testify, the prosecution has the right to cross examine you. You must ask your witness only direct questions and are not allowed to ask leading questions.

If during the trial, you have an objection to a question by the prosecution, you may rise and object but you must be able to state the legal grounds of your objection.

After the testimony is concluded by both sides, you may rise and make a closing argument to tell the court or jury why you feel you are not guilty. BUT such statement can be based only on testimony given under oath during the trial from the witness stand. No new facts or information can be used.

After the verdict, if you are found Guilty, you have 10 days to pay the fine or appeal the verdict to the Appeals Court. If you appeal, it will be necessary to post an Appeal Bond of twice the amount of the fine and court costs. It is suggested that the Appeal be by a licensed attorney.

SPECIAL NOTE ON JURY TRIALS

The jury trial starts with the selection of the jury from the jury panel. The state will question the members of the panel to determine which may be the best juror for the state. You will then question the panel to determine the best jurors for the defense. When the panel has been questioned by both sides, you will "Strike" or "Mark Out" three (3) jurors on your jury list you do not want. The state will do the same and the court selects the jury from the first six (6) names that are not marked out by either side.

SUMMARY OF TRIAL PROCEDURE

1. Selection of Jury
2. Jury Sworn in
3. Prosecution and Defense announce "Ready"
4. Complaint is read by prosecution to defendant
5. Defendant enters his or her plea of Not Guilty
6. Witnesses are sworn in (also defendant if he is to testify)
7. Rule may be invoked by prosecution or defense (witnesses cannot hear testimony of other witnesses — exception the defendant)
8. Prosecution testimony offered
9. Cross-examination by defense
10. Rebutting testimony by prosecution
11. Defense testimony
12. Cross-examination by prosecution
13. Rebutting testimony by defense
14. Any motions
15. Final argument by defense
16. Final argument by prosecution
17. Verdict
18. Appeal or discharge

Service: **Get by LEXSEE®**
Citation: **10 S.W. 3d 74**

*10 S.W.3d 74, *; 1999 Tex. App. LEXIS 9136, ***

JERRY FRANK BIRDWELL, Appellant v. THE STATE OF TEXAS, Appellee

NO. 14-98-01317-CR

COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT, HOUSTON

10 S.W.3d 74; 1999 Tex. App. LEXIS 9136

December 9, 1999, Rendered
December 9, 1999, Opinion Filed

NOTICE: [1]** PURSUANT TO THE TEXAS RULES OF APPELLATE PROCEDURE, UNPUBLISHED OPINIONS SHALL NOT BE CITED AS AUTHORITY BY COUNSEL OR BY A COURT.

PRIOR HISTORY: On Appeal from the County Criminal Court at Law No. 2. Harris County, Texas. Trial Court Cause No. 97-16243. Michael Peters, Judge.

DISPOSITION: Reversed and Remanded.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant filed an appeal challenging a judgment of the County Criminal Court at Law No. 2, Harris County (Texas), which convicted him for failing to stop and give information following an accident.

OVERVIEW: Appellant and complainant were involved in an auto accident. They drove to a gas station where complainant called police. When complainant approached appellant with her insurance information, appellant drove off. Appellant asserted his right of self-representation just prior to trial. The trial court denied his request, concluding that appellant had asked to represent himself solely for the purpose of delaying the trial. On appeal, appellant argued the trial court improperly denied his right of self-representation and that the evidence was legally and factually insufficient to support the conviction. The court held the denial of appellant's right to self-representation was not justified because the request to proceed pro se was made timely, and there were no conditions attached. The request could not be denied merely on an assumed delay tactic. The evidence established, and appellant did not deny, that he left the scene without providing the statutorily required information.

OUTCOME: Judgment reversed and case was remanded; while evidence established appellant left accident scene without providing statutorily required information, denial of appellant's right to self-representation was improper because request to proceed pro se was made timely with no conditions attached. The request could not be denied merely on assumed delay tactic.

CORE TERMS: self-representation, scene, driver, unequivocally, wait, liability insurer, proceed pro se, registration, favorable, license, unjust, drove, rational trier of fact, purposes of delay, overwhelming, calculated, disruption, empaneled, demeanor, obstruct, untimely, pet, insufficient to support, provide information, police arrived, gas station, affirmatively, misdemeanor, approached, announced

CORE CONCEPTS - ♦ Hide Concepts

Criminal Law & Procedure : Counsel : Right to Self-Representation

The U.S. Const. amend. VI, XIV guarantee that a person brought to trial in any state or federal court has the right to self-representation. The right to self-representation does not attach, however, until it has been clearly and unequivocally asserted. It must also be asserted in a timely manner, namely, before the jury is empaneled. Once the right has been asserted, the trial judge is obliged to make the accused aware of the consequences of self-representation. Thereafter, if the accused maintains his desire to proceed pro se, he should be allowed to do so as long as the assertion of his right to self-representation is unconditional and not asserted to disrupt or delay the proceedings.

Criminal Law & Procedure : Counsel : Right to Self-Representation

Although an exercise of the right of self-representation may cause some inconvenience or even disruption in the trial proceedings, so long as it is not a calculated obstruction, this delay cannot deprive the accused of the right once properly asserted. An accused must be permitted to conduct his own defense, even if to his own detriment, if that is his informed choice. A defendant's clear and unequivocal request for self-representation, followed by an unmistakable denial of that right, is sufficient to preserve the alleged error.

Criminal Law & Procedure : Appeals : Standards of Review : General Rules

When reviewing legal sufficiency, an appellate court views the evidence in the light most favorable to the verdict and determine whether a rational trier of fact could have found the elements of the offense beyond a reasonable doubt. The trier of fact is the exclusive judge of the credibility of the witnesses and the weight to be given their testimony.

Criminal Law & Procedure : Appeals : Standards of Review : General Rules

In reviewing factual sufficiency, an appellate court views all the evidence without the prism of "in the light most favorable to the prosecution" and sets aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. A factual sufficiency review takes into consideration all of the evidence and weighs the evidence tending to prove the existence of the fact in dispute against the contradictory evidence.

Criminal Law & Procedure : Criminal Offenses : Vehicular Crimes

The driver of a vehicle involved in an accident resulting only in damage to another vehicle must immediately stop at the scene of the accident and remain there until he has provided the other driver with: (1) his name and address, the registration number n6 of his vehicle, and the name and address of his liability insurer, and (2) if requested and available, his driver's license. Tex. Transp. Code Ann. §§ 550.022(a), 550.023 (1999).

COUNSEL: Brian Wice of Houston, TX, for appellants.

Carmen Mitchell of Houston, TX, for appellees.

JUDGES: Panel consists of Justices Amidei, Edelman, and Wittig.

OPINIONBY: RICHARD H. EDELMAN

OPINION: [*76]

OPINION

Jerry Frank Birdwell appeals a misdemeanor conviction for failing to stop and give information on the grounds that the trial court erred in denying him his right of self-representation and that the evidence is legally and factually insufficient to support the conviction. We reverse and remand.

Appellant and the complainant were involved in an auto accident. They drove to a gas station where complainant called the police. Appellant requested that they exchange insurance information and, initially, the complainant told him she wanted to wait until the police arrived. However, when the complainant subsequently approached appellant with her information, appellant drove off.

At trial, the jury found appellant guilty of the misdemeanor offense of failing to stop and give information as alleged in the information and **[**2]** assessed a $ 350 fine as punishment.

Right of Self-Representation

In points of error one and two, appellant contends that the trial court erred in denying his right of self-representation in violation of the United States and Texas Constitutions. After each side had announced ready to proceed, but prior to the venire being brought into the courtroom for jury selection, the following exchange occurred:

MR. SPROTT: Mr. Birdwell has a motion he wants to make, Your Honor, for the record.

THE COURT: Well, he doesn't have any standing to make any motions. In fact, Mr. Birdwell, you better remain silent in the course of this trial and not make any gestures or mannerisms to this jury. He may communicate to you, however, you are representing him, Mr. Sprott. All right.

MR. SPROTT: He wants me to tell you he wants to represent himself.

THE COURT: He wants to represent himself. Well, *I'm not going to delay this trial any longer.* I've appointed Mr. Sprott to represent you. He has represented you this far, he will continue to represent you in this case. So that is my order.

MR. BIRDWELL: Would you mind a record that I -

THE COURT: I'm not communicating to you, Mr. **[**3]** Birdwell, unless I direct my comments to you.

MR. BIRDWELL: May I make a record that I would like to represent myself and the Court denied it?

THE COURT: That's right.

MR. SPROTT: She's got that on the record, the court reporter is taking it down.

THE COURT: All right . . .

(emphasis added).

Appellant argues that he asserted his right of self-representation timely, clearly, and unequivocally and that the trial judge's cursory denial of his request was error. Although the

judge premised the **[*77]** denial of appellant's right of self-representation on a concern regarding delay, appellant asserts that the record does not affirmatively reveal that his request was made to achieve delay or tactical advantage, or that it would have resulted in delay; particularly because appellant did not demand the appointment of different counsel but merely requested to proceed in his own behalf.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee that a person brought to trial in any state or federal court has the right to self-representation. *See Faretta v. California*, 422 U.S. 806, 819-20, 45 L. Ed. 2d 562, 95 S. Ct. 2525 (1975); *Moore v. State*, 999 S.W.2d 385, 396 (Tex. Crim. App. 1999). **[**4]** n1 The right to self-representation does not attach, however, until it has been clearly and unequivocally asserted. *See Ex parte Winton*, 837 S.W.2d 134, 135 (Tex. Crim. App. 1992). It must also be asserted in a timely manner, namely, before the jury is empaneled. *See McDuff v. State*, 939 S.W.2d 607, 619 (Tex. Crim. App. 1997). Once the right has been asserted, the trial judge is *obliged* to make the accused aware of the consequences of self-representation. *See Faretta*, 422 U.S. at 835; *Winton*, 837 S.W.2d at 135. Thereafter, if the accused maintains his desire to proceed pro se, he should be allowed to do so as long as the assertion of his right to self-representation is unconditional and not asserted to disrupt or delay the proceedings. *See id.* However, although an exercise of the right of self-representation may cause some inconvenience or even disruption in the trial proceedings, so long as it is not a calculated obstruction, this delay cannot deprive the accused of the right once properly asserted. *See Scarbrough v. State*, 777 S.W.2d 83, 92 (Tex. Crim. App. 1989). An accused must be permitted **[**5]** to conduct his own defense, even if to his own detriment, if that is his informed choice. *See Faretta*, 422 U.S. at 834; *Scarbrough*, 777 S.W.2d at 92. A defendant's clear and unequivocal request for self-representation, followed by an unmistakable denial of that right, is sufficient to preserve the alleged error. *See Funderburg v. State*, 717 S.W.2d 637, 642 n.6. (Tex. Crim. App. 1986).

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - -

n1 The right to self-representation has been applied to misdemeanor offenses as well as felonies. *See, e.g., Goffney v. State*, 843 S.W.2d 583 (Tex. Crim. App. 1992); *Blocker v. State*, 889 S.W.2d 506 (Tex. App.-Houston [14th Dist.] 1994, no pet.).

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

In this case, appellant clearly and unequivocally stated that he wished to represent himself. Because appellant's request was made prior to the jury being empaneled, it was made timely, and there were no conditions attached to the request. However, the State contends that appellant's request was untimely, **[**6]** being made on the day of trial, and that because the trial judge was able to view appellant's demeanor upon making such a request, he properly concluded that appellant had made the request for purposes of delay. The State cites *Blankenship* for the proposition that the trial court can properly deny a request for self-representation if the trial court concludes, without additional evidence in the record, that a defendant's assertion of the right to self-representation was made for delay, that it would have resulted in delay, or that the trial court denied the request on the *assumption* it would have resulted in delay. *See Blankenship v. State*, 673 S.W.2d 578, 585 (Tex. Crim. App. 1984). The State further argues that appellant's demeanor upon making the request apparently indicated to the trial court that the appellant was asserting the right for purposes of delay. However, the portion of *Blankenship* relied upon by the State discusses a request for a *change* in counsel, rather than a request to proceed pro se. n2 The State has cited and we have **[*78]** found no case in which denial of the right of self representation was based on an assumed delay merely from proceeding **[**7]** pro se. Morever, were we to follow the State's reasoning, it could effectively insulate denials of self-representation from meaningful appellate review.

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n2 *See also* Robles v. State, 577 S.W.2d 699, 704 (Tex. Crim. App. 1979) (stating "It should be remembered, however, an accused's right to represent himself or select his own counsel cannot be manipulated so as to obstruct the orderly procedure in the courts or to interfere with the fair administration of justice. An accused, therefore, may not wait until the day of trial to *demand different counsel* or to request that counsel be dismissed *so that he may retain other counsel*.") (emphasis added) (citations omitted).

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

In this case, appellant announced ready prior to his request to proceed pro se. He did not request access to legal materials or condition his request on a continuance or in any other manner. From this record, there is no basis to conclude that granting appellant's request was likely to result in delay. n3

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n3 *See, e. g.*, Winton, 837 S.W.2d at 136 (claiming that because the trial judge found no evidence that appellant's assertion of his right to self-representation was untimely, conditional, or that it would have been disruptive or dilatory, there was no justification for denying that right); Johnson v. State, 676 S.W.2d 416, 420 (Tex. Crim. App. 1984) (reversing a decision denying appellant the right to self-representation, noting "there is not anything in this record that would reflect that had the trial judge honored appellant's demand for self-representation at that point in time, [it] would have caused such a disruption of the proceedings as to have affected the administration of justice."); Scarbrough, 777 S.W.2d at 94 n.3 (noting that courts should "hesitate to deny an asserted right to self representation solely on the basis of *predictions* of likely recalcitrant behavior. . . . We find no support in the record to justify concluding appellant's assertion of his right to self representation was calculated to obstruct, or would likely result in a farce and mockery of justice and the judicial process.").

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - - **[**8]**

The State also argues that denying appellant's request was proper because the record does not affirmatively show that he was aware of the dangers and disadvantages of representing himself and that he was competent to choose to represent himself. However, once appellant unequivocally and timely asserted his right to self-representation, it was the trial court's duty to give the necessary explanations and warnings before ruling on his request. *See* Winton, 837 S.W.2d at 135; Boyd v. State, 683 S.W.2d 542, 543 (Tex. App.-- Dallas 1984, no pet.). n4 The judge's failure to do so cannot prejudice appellant's constitutional right to self-representation. *See* Boyd, 683 S.W.2d at 543.

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n4 Had the trial court made appellant aware of the consequences of self-representation, it is possible that he would have withdrawn the request or been found incapable of making an intelligent waiver. The trial court also had the option to appoint "stand-by" counsel. *See* Faretta, 422 U.S. at 834 n.46.

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - - **[**9]**

Because the denial of appellant's right to self-representation was not justified and is not subject to harmless error analysis, n5 we sustain appellant's points of error one and two.

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n5 *See* McKaskle v. Wiggins, 465 U.S. 168, 177, 79 L. Ed. 2d 122, 104 S. Ct. 944 (1984).

- - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

Legal and Factual Sufficiency

Points of error three and four assert that the evidence was legally and factually insufficient to support the jury's verdict because it is uncontradicted that appellant physically stopped his vehicle at the scene of the accident, waited there an hour, and offered to exchange his information with the complainant, who was initially unwilling to do so until the police arrived. Appellant argues that common sense dictates there is a limit to the amount of time that a citizen must remain at an accident scene, offering to exchange information, before that citizen may leave. Moreover, he argues that this evidence compels the conclusion that the verdict is so clearly against the great weight and **[**10]** preponderance of the evidence as to be manifestly unjust.

Standard of Review

When reviewing legal sufficiency, we view the evidence in the light most favorable to the verdict and determine whether **[*79]** a rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *See* Jackson v. Virginia, 443 U.S. 307, 318-19, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979); Kutzner v. State, 994 S.W.2d 180, 184 (Tex. Crim. App. 1999). The trier of fact is the exclusive judge of the credibility of the witnesses and the weight to be given their testimony. *See* Jones v. State, 944 S.W.2d 642, 647 (Tex. Crim. App. 1996).

In reviewing factual sufficiency, we view all the evidence without the prism of "in the light most favorable to the prosecution" and set aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *See* Kutzner, 994 S.W.2d at 184. A factual sufficiency review takes into consideration *all* of the evidence and weighs the evidence tending to prove the existence of the fact in dispute against the contradictory evidence. *See* Fuentes v. State, 991 S.W.2d 267, 271 (Tex. Crim. App. 1999). **[**11]**

The driver of a vehicle involved in an accident resulting only in damage to another vehicle must immediately stop at the scene of the accident and remain there until he has provided the other driver with: (1) his name and address, the registration number n6 of his vehicle, and the name and address of his liability insurer, and (2) if requested and available, his driver's license. *See* TEX. TRANSP. CODE ANN. §§ 550.022(a), 550.023 (Vernon 1999). Failure to comply with these requirements is a Class B misdemeanor if the damage to all vehicles is $ 200 or more. *See id.* § 550.022(c)(2).

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n6 Vehicle registration number means license plate number. *See* Morris v. State, 786 S.W.2d 451, 454-55 (Tex. App.-Dallas 1990, writ ref'd).

- - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

The information in this case alleged that appellant was involved in an accident that resulted only in damage to a vehicle driven by the complainant and that appellant failed to "stop his vehicle at the scene of said accident and give his name, **[**12]** his address, [his] registration number . . . and exhibit his operator's license and the name of [appellant's] motor vehicle liability insurer to complainant."

Sufficiency Review

The State presented the testimony of the complainant, a bystander witness, and the officer who eventually arrived upon the scene. The evidence indicated that appellant's vehicle collided with complainant's vehicle and both drivers pulled into a gas station nearby. The complainant testified that appellant initially approached her - within approximately the first fifteen minutes of the accident - and offered to exchange information; however, the complainant suggested that they wait until the police arrive. After the complainant and appellant had waited for the police for about an hour, the complainant told appellant she would retrieve her information from her car. When she returned to appellant's car with her information in hand, appellant said he did not have time and quickly drove away. The evidence establishes, and appellant does not deny, that he left the scene without providing the statutorily required information.

Although appellant stopped at the scene of the accident n7 and initially offered **[**13]** to exchange information with the complainant, at no point did he present or even display any information to the complainant before leaving the scene. n8 Viewing the **[*80]** evidence in the light most favorable to the verdict, a rational trier of fact could have found, beyond a reasonable doubt, that appellant failed to provide his name and address, driver's license, and the name and address of his liability insurer to the complainant. Moreover, the verdict is not so contrary to the overwhelming weight of evidence as to be clearly wrong and unjust because there is no evidence that appellant presented any of the required information. Appellant's third and fourth points of error are thus overruled.

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n7 Appellant argues that because the information alleged, in part, that he failed to stop, but the evidence is uncontroverted that he did stop, the State's failure to prove the he did not stop alone renders the evidence legally insufficient. We disagree. Appellant was required by law to *both* stop *and* provide information and was charged with the failure to do *both*. It was not necessary for the State to prove that he failed to do *each*. Rather, the requirement to do both cannot be satisfied where there is a failure to do either. Therefore by failing to provide information, appellant violated the requirement to both stop and provide information. **[**14]**

n8 Appellant's violation was thus not in failing to wait longer but in failing to actually present any information to the complainant before he left. Although we agree that the complainant's delay in providing the information was not justified, it did not excuse appellant's non-compliance.

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - -

Because we have sustained appellant's first and second points of error, the judgment of the trial court is reversed, and the case is remanded for further proceedings.

/s/ Richard H. Edelman

Justice

Judgment rendered and Opinion filed December 9, 1999.

Panel consists of Justices Amidei, Edelman, and Wittig.

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Citation: **10 S.W. 3d 74**
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Cause(s) J04 – 018317 – 01, J04 – 018317 - 02, J04 - 018317 - 03,
J04 – 018317 – 04, J04 – 018317 - 05

CITY OF DALLAS ex rel. COUNTY OF DALLAS STATE OF TEXAS	§	IN THE MUNICIPAL COURT # 7
Plaintiff	§	CITY OF DALLAS
v.	§	DALLAS COUNTY
JEFFERY STUART KATZ	§	AARON RAYNISH, CITY PROSECUTOR
ALLEGED ACCUSED,	§	
LEGAL FICTION, and or ACTOR	§	

FILED
Municipal Court
CITY OF DALLAS, TEXAS
NOV 16 2004
BY

Bill of Particulars

I, ME, Jeffrey Stuart, of the family Katz, in propria persona, NOT pro se, a free living breathing, sovereign conscious Jewish man, a Kohan, a high priest of "the most high" have knowledge of my own law given by my family, which includes; Jacob, Isaac, Abraham, Moses, Aaron and Joshua make this special appearance, come in a ministerial capacity before this alleged, so-called court, and hereby make this "Bill of Particulars" due to continued threat, assault, duress, coercion, extortion, kidnapping by professed government AGENTS or ACTORS that continue to operate under the color of law, with impunity and immunity, throughout the land known as the State of Texas, contrary to the intent of the law of the land.

I do not understand or comprehend the proceedings since I am not trained, and may be incapable of defending myself in a criminal prosecution. I also do not recognize the authority, the jurisdiction and venue of this alleged court. Jurisdiction CANNOT be assumed when challenged and MUST be proven with findings of facts and conclusions of law. Anything else will be insufficient and may subject all parties violating this point of law to civil and/or criminal actions in a court of proper jurisdiction and venue.

I, ME, Jeffrey Stuart, Katz declare the following alleged hearing(s) unfair and demand the following questions to be answered fully by the alleged PLAINTIFF(S') AGENT, as I need this information so I can attempt to defend myself, pursuant to the due process of the law, from an imaginary, legal fiction, or foe, as I have a right to know who in fact, is my adversary, or accuser, as well as, the nature and cause of the alleged violations, charges or complaints and have access to all the pertinent facts and all the applicable law – (international, federal, state, et.al.).

This is Bill of Particulars is presented pursuant to alleged JUDGE VICTOR C. LANDER'S instructions to the CITY PROSECUTOR, AARON RAYNISH on June 15, 2004 c.e. in the alleged MUNICIPAL COURT OF DALLAS.

Be it known that in the event, the alleged accused's Bill of Particulars is not fully answered by the alleged PLAINTIFF(S') AGENT, AARON RAYNISH at least five (5) days prior to so-called trial of the above captioned purported instant action, the following Bill of Particulars will be submitted to the appropriate Court of superior jurisdiction, thereby leaving no remedy but to file this instrument upon the public record in the interest of public welfare for all to witness.

My specific intent is to defend, protect my rights at all times, never waive any rights, at anytime while pursuing all my administrative remedies and now state, that I am conducting my own criminal investigation as there is no competent attorney(s) available to counsel or represent ME, as I AM a living man.

I declare that the AGENTS of the STATE OF TEXAS, the CITY OF DALLAS, and the COUNTY OF DALLAS have fabricated these cases in an blatant attempt to make ME party to their scheme, to extort unlawful funds, from one of WE the People, contrary to the intent and nature of a republican form of government.

Questions to be Answered

1. For the record, factually how is it possible to represent myself pro se, in this so-called hearing when I am myself? Consequently, "Impossibilium Nulla Obligation Est." there is NO obligation to do impossible things. I am ME, I am free, sovereign and enjoy "Equal Footing" with other sovereigns not "Legal Fictions."
2. For the record, why would I attempt to represent myself, when I am ME, and not trained in these matters?
3. For the record, factually what is the meaning and definition of "to exhaust all administrative remedies"?
4. For the record, factually what is the meaning and definition of "exhaust"?
5. For the record, factually did the alleged Court error when it held in Woo Lee vs Hopkins, 118 US 356? "Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts."
6. For the record, factually what is the meaning and definition of "Sovereignty"?
7. Does the Declaration of Independence state the following? "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable Rights; that among these are Life, Liberty, & the pursuit of Happiness; that to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed."
8. For the record, factually did the alleged Court mistake in Hauenstein vs Lynham, 100 US 483? "There can be no limitation on the power of the people of the United States (of America). By their authority the State Constitutions were made and by their authority the Constitution for the United States (of America) was established..."
9. For the record, factually did the alleged Court error when it held in United States vs Fox, 94 U.S. 315? "... that in common usage, the term "person" does not include the sovereign. Statutes employing the phrase are ordinarily construed to exclude it."
10. For the record, factually does 18 USC, Rule 54.C Positive Law enacted state, "Acts of Congress" are not applicable to "sovereigns" in the 50 states?
11. For the record, factually did the alleged Court error when it held in The Siren, 74 U.S. 152 (1968)? "It is the doctrine of the common law that the sovereign cannot be sued in his own court without consent. "
12. Court mistake when it held in State vs. Batson, 17 S.E. 2d 511, 512, 513? "No action can be taken against a sovereign in the non-constitutional courts of either the United states or the state courts and any such action is considered the crime of Barratry. Barratry is an offense at common law."
13. For the record, factually what is the meaning and definition of "barratry"?
14. For the record, factually what is the meaning and definition of "defective service"?
15. For the record, factually what is the meaning and definition of "benefits of discussion"?
16. For the record, factually what is the meaning and definition of "nexus"?
17. For the record, factually what is the meaning and definition of "Contempt of Court"?
18. For the record, factually is it possible to challenge and then be denied ineffective assistance of counsel, when one's counsel's legal approach was a tactical miscalculation, and as such, was ineffective assistance, and did undermine the fundamental fairness of the court proceedings?
19. For the record, factually what is the meaning and definition of "jurisprudence"?

20. For the record, factually what is the meaning and definition of "the law"?

21. For the record, factually can YOU contradict my claim that the Law of my Father given to ME, is "the Torah"?

22. For the record, factually can YOU describe "the Torah"?

23. For the record, factually what is the meaning and definition of "positive law"?

24. For the record, are the words of founding father Thomas Jefferson, accurate when he stated the following?

"Man once surrendering his reason, has no remaining guard against absurdities the most monstrous, and like a ship without rudder, is the sport of every wind. With such persons, gullibility, which they call faith, takes the helm from the hand of reason, and the mind becomes a wreck".

25. For the record, why did founding father Thomas Jefferson say the following?

"I know of no safe depository of the ultimate powers of the society but the people themselves, and if we think them not enlightened enough to exercise control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education".

26. For the record, does founding father Thomas Jefferson's explanation regarding truth inspire YOU as it does ME?

"We are not afraid to follow truth wherever it may lead, nor to tolerate any error so long as reason is left free to combat it".

27. For the record, factually what is the meaning and definition of "clearly erroneous"?

28. For the record, factually what is the meaning and definition of "error"?

29. For the record, did Thomas Jefferson correctly forewarn the American people when he said the following?

"You seem...to consider the judges as the ultimate arbiters of all Constitutional questions: a very dangerous doctrine indeed, and one, which would place U.S. under the despotism of an oligarchy. Our judges are as honest as other men, and not more so. They have, with others, the same passions for party, for power, and the privilege of their corps.... And their power (is) the more dangerous, as they are in office for life and not responsible, as the other functionaries are, to the elective control. The Constitution has erected no such single tribunal, knowing that to whatever hands confided, with the corruption of time and party, its members would become despots".

30. For the record, factually what is the meaning and definition of "doctrine"?

31. For the record, will alleged JUDGE VICTOR C. LANDER follow Texas law and acknowledge TCCrP Art. 38.23?

TCCrP Art. 38.23 EVIDENCE NOT TO BE USED

"(a) No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution of the laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case ...," to my detriment.

32. For the record, did the purported Court error when it held in Polk v. State, 738 S.W.2d 274, 276 (1987)?

"The terms of [TCCrP Art. 38.23] are mandatory ... Violation of a State statue or constitutional provision in obtaining evidence requires suppression of that evidence under Art. 38.23, supra; a judge has no discretion in ruling on the exclusion of that evidence. We find that a defendant is not required to specifically state Art. 38.23, supra, in his objection to the admissibility of evidence at trial to preserve error on appeal."

33. For the record, did the alleged Court hold correctly in Garcia v. State, 829 S.W.2d. 796, 799 (1992)?

"We must enforce [TCCrP Art. 38.23] as written, excluding all illegally obtained evidence, with the single exception as set out in the statute."

34. For the record, did the so-called Court error when it held in Jimenez v. State, 750 S.W.2d 798, 804?

"Standing is a function of the citizen's reasonable expectation of privacy, and as such has application in assessing

challenges predicated solely upon TCCrP Arts. 1.06 and 38.23."

35. For the record, is there evidence "beyond a reasonable doubt" of a complaining party?

36. For the record, factually what is the meaning and definition of "beyond a reasonable doubt"?

37. For the record, factually what is the meaning and definition of a "complaining party"?

38. For the record, factually what is the meaning and definition of "evidence"?

39. For the record who or what is exactly bringing the evidence forward?

40. For the record, did the alleged Court mistake when it held in Verkin v. South-West Ctr. One, Ltd., S.W. 2d 92, 94 (Tex. App. Houston [1st Dist.] 1993), and in Roob v. Von Bergegshasy, 866 S.W. 2d. 765, 766 (Tex. App. Houston [1st Dist.]?

"On Appeal Defendant has preserved his grounds for appeal by error in the filing of this motion. It is well settled that if the party's motion for continuance is not granted after good cause being shown, such error is grounds for appeal, and the error is treated as [a] clear abuse of discretion and is just grounds for summary reversal."

41. For the record, factually what is the meaning and definition of "abuse of discretion"?

42. For the record, factually what is the meaning and definition of "summary reversal"?

43. For the record, did the alleged Court error when it reversed in Duckett v. State, 797 S.W.2d 906, 910 n. 10 (Tex.Crim.App. 1990), on other grounds, 849 S.W.2d 817 (Tex.Crim.App. 1993).

T.R.Crim.E. 101(c) "would appear to require that any inconsistency between the case law and rule be 'removed by reasonable construction.'"

44. For the record, factually what is the meaning and definition of "removed by reasonable construction"?

45. For the record, factually did the alleged Court error in Watson v. State, 917 S.W.2d 65, 69 (1996)?

"[W]e hold that the Texas Rules of Criminal Evidence apply to jury voir dire.... We based this holding mainly on the rules themselves, which state that they 'govern criminal proceedings in courts of Texas except where otherwise provided.'"

46. For the record, factually did the alleged Court error in Dorsett v. State, 761 S.W.2d 432, 433 (1988)?

"The rules of criminal evidence give to the trial court wide discretion in determining the admissibility of evidence."

47. For the record, factually did the alleged Court error in Harrell v. State, 884 S.W.2d 154 (Tex.Crim.App. 1994)?

"We ... hold that in deciding whether to admit extraneous offense evidence in the guilt / innocence phase of trial, the trial court must, under rule 104(b), make an initial determination at the proffer of the evidence, that a jury could reasonably find beyond a reasonable doubt that the defendant committed the extraneous offense."

48. For the record, factually did the alleged Court fail in McVickers v. State, 874 S.W.2d 662 (Tex.Crim.App. 1993)?

Under Rule 1104(d)(4) the trial court "is not given discretion to admit hearsay testimony which is inadmissible under the rules of evidence .... Texas Rule 104(a) is a general rule of evidence to which 1101(d)(4) provides specific application for hearings on motions to suppress evidence."

49. For the record, factually did the alleged Court error in Williams v. State, 927 S.W.2d 752, 760 (1996)?

"Where evidence is offered for a specific purpose, the party opposing its admission is entitled to a limiting instruction informing the jury of the limited purpose of the evidence."

50. For the record, factually did the alleged Court mistake in Gilmore v. State, 744 S.W.2d 630, 631 (1987)?

T.R.Crim.E. 106 "is not written in mandatory terms. This rule is a narrow modification of the doctrine of optional completeness, controlling the time an adversary can introduce certain kinds of remainder evidence. The language of the rule is a permissive grant & not a requirement. As noted in the comment to the rule, this rule

does not in any way circumscribe the right of a party to develop fully the matter on cross-examination or as part of his own case .... The underlying purpose for both [T.R.Crim.E. 106 & 107] is to reduce the possibility of the fact finder receiving a false impression from hearing the evidence of only a part of a writing."

51. For the record, factually what is the meaning and definition of "the doctrine of optional completeness"?

52. For the record, factually did the alleged Court mistake in Gonzales v. State, 929 S.W.2d 546, 550 (1996)? "Under [T.R.Crim.E. 104(b)], whether a conditional fact has been proved is a question for the jury."

53. For the record, factually did the alleged Court mistake in Thompson v. State, 752 S.W.2d 12, 14 (1988)? T.R.Crim.E. 105 "clearly entitled the [defendant] to a binding instruction not to use the evidence for any purpose other than the purpose for which the evidence was admitted. While the better practice appears to be to give the instruction at the time the evidence is admitted, our concern is satisfied by the fact that the limiting instruction was given to the jury in the jury charge."

54. For the record, factually what is the meaning and definition of "practice"?

55. For the record, factually what is the meaning and definition of "deceptive practice"?

56. For the record what testimony proves beyond a reasonable doubt that the STATE OF TEXAS, the COUNTY OF DALLAS, and the CITY OF DALLAS actually exist(s)?

57. For the record is it possible to go to a criminal trial without discovery?

58. Factually what is the meaning and definition of "discovery"?

59. I know who I am, however I do not know or acknowledge the alleged PLAINTIFF(S), therefore, is it possible to meet and converse with the principal, not a third party or AGENT, so I can set the record straight?

60. Factually what is the meaning and definition of a "dispute"?

61. For the record are the alleged PLAINTIFF(S) real or imaginary?

62. Factually what is the meaning and definition of "real"?

63. Factually what is the meaning and definition of "imaginary"?

64. For the record did Abraham Lincoln state the truth regarding the gravity of the Constitution of the United States? "Our safety, our liberty, depends upon preserving the Constitution of the United States as our fathers made it inviolate. The people of the United States are the rightful masters of both Congress and the courts, not to overthrow the Constitution, but to overthrow the men who pervert the Constitution".

65. For the record did Samuel Adams state the historical importance of the Constitution correctly? "The liberties of our country, the freedom of our civil Constitution, are worth defending at all hazards; and it is our duty to defend them against all attacks. We have received them as a fair inheritance from our worthy ancestors: they purchased them for us with toil and danger and expense of treasure and blood, and transmitted them to us with care and diligence. It will bring an everlasting mark of infamy on the present generation, enlightened as it is, if we should suffer them to be wrested from us by violence without a struggle, or to be cheated out of them by the artifices of false and designing men".

66. For the record, factually what is the meaning and definition of "fair"?

67. For the record, factually what is the meaning and definition of "inheritance"?

68. For the record are the PLAINTIFF(S) actions consistent with the right to life, liberty, property and the pursuit of happiness, which is guaranteed by the alleged Constitution(s)?

69. Factually what is the meaning and definition of "guaranteed"?

70. Factually what is the meaning and definition of "alleged"?

71. For the record do I have the right to face my accuser?

72. For the record are these alleged traffic tickets consistent with the alleged 1876 Texas Constitution?

73. For the record, factually are the actions of AGENT, ACTOR GUENTHER, et.al. consistent with the intent of Art. 1 § 9. SEARCHES & SEIZURES of the 1876 Texas Constitution?

Texas Constitution Art. 1 § 9. SEARCHES & SEIZURES

"The people shall be secure in their persons, houses, papers, and possessions from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation."

74. For the record are these alleged traffic tickets consistent with the stated public policy of the STATE OF TEXAS or the State of Texas?

75. For the record, factually what is the meaning and definition of "policy"?

76. Factually what is the point to this so-called hearing or meeting, if there is NO lawful contract joining the parties and there is not a meeting of the minds?

77. Factually what is the meaning and definition of an "adhesion contract or agreement"?

78. Factually what is the meaning and definition of "a meeting of the minds"?

79. Factually what is the meaning and definition of "the liberty of contract"?

80. For the record did the alleged Court hold correctly in Gardner v. Lane, 12 Allen (Mass) 44?

"When there is a disagreement in the substance, it appears that there is no acceptance."

81. For the record do attorneys at law utilize Black's Law Dictionary and or Bouvier's Law Dictionary?

82. For the record, factually what is Black's Law Dictionary?

83. For the record, factually what is Bouvier's Law Dictionary?

84. For the record are the average or the common (wo) man aware and have easy access to these law dictionaries?

85. For the record if the words of art are not used by the average or common (wo) man in daily life, how is it possible for the (wo) man to understand or comprehend what the attorney at law, and his accomplices are saying, or doing?

86. For the record, factually what is the meaning and definition of "words of art"?

87. For the record, factually what is the meaning and definition of "ethical"?

88. For the record, factually what is the meaning and definition of "unethical"?

89. For the record does employing words of art cause an advantage for the licensed, practicing attorney at law?

90. For the record why does an attorney at law attain a license to practice law?

91. For the record did the purported Court error when it held in Shelley v. Chilton's Adm'r, 32 S.W.2D 974, 977?

"Common knowledge includes matters of learning, experience, history, and facts of which judicial notice may be taken, and my be referred to in an argument of counsel."

92. For the record when an attorney at law argues or speaks in a language or tongue unknown to the average or common (wo) man is that unfair, since the average or common (wo) man is not trained in that language, so (s) he is at a disadvantage and has no idea what the attorney at law et. al. are saying or doing?

93. For the record, factually what is the meaning and definition of "unfair"?

94. For the record is the fact that the average or common (wo) man is not trained to understand or comprehend this specialized language, and (s)he has no idea what the attorney at law and his accomplices are saying or doing, does this make the whole procedure null and void, since All laws MUST be understandable for the common or

average (wo) man?

95. For the record, factually what is the meaning and definition "at law"?

96. For the record, factually what is the meaning and definition of "frivolous"?

97. For the record, factually are the actions brought by the imaginary PLAINTIFFS frivolous, since there is no damaged or injured party?

98. For the record, factually why are the actions of the imaginary PLAINTIFFS not frivolous?

99. For the record, did the purported Court error when it held in Will vs Michigan state Police, (1938 105 L.Ed.2nd 45). "The term "person" does not include the "sovereign" and that for a sovereign to be bound by statute the sovereign must be "specifically" named."

100. For the record, did the purported Court mistake when it held in Warner v. Beers, 23 Wend. (N.Y.) 103, 144? "Towns and boroughs [municipal corporations] act as if persons."

101. For the record, factually what is the meaning and definition of "person"?

102. For the record, factually is a person a corporation?

103. For the record, factually do corporations have the same rights as a living man or woman?

104. For the record, factually what is the meaning and definition of "individual"?

105. For the record, factually what is the meaning and definition of "alias"?

106. For the record, factually what is the meaning and definition of "reasonable"?

107. For the record, factually what is the meaning and definition of the "victim"?

108. For the record, factually what is the meaning and definition of "fictitious"?

109. For the record, is there a victim or is the victim fictitious?

110. For the record can I meet and speak to the victim of the crime?

111. For the record, is it the alleged victim alive and exist, or is the alleged victim dead, and a figment of someone's vivid imagination?

112. For the record, is it possible to get a fair, impartial hearing, when the purported Court is paid and believes the same lies and or myths, as the accuser(s)?

113. For the record, factually what is the meaning and definition of "fair and impartial"?

114. For the record is it possible for the PLAINTIFFS to be misguided, confused, mistaken and or incapable?

115. For the record are the alleged, imaginary PLAINTIFFS above the law, since THEY do not exist and cannot be placed put in jail?

116. For the record, does the STATE OF TEXAS, or the COUNTY or the CITY OF DALLAS have a corporate charter?

117. For the record when a corporation acts outside the guidelines of their corporate charter is it proper, and for "the sake of good order", to repeal their charter?

118. For the record, factually are the alleged, fictitious, PLAINTIFFS operating outside their intended charters?

119. For the record, factually what steps are involved, in repealing the Charter for the CITY OF DALLAS, et. al.?

120. For the record, what is the procedure to repeal a Municipal Charter that was incorrectly set up?

121. For the record, are Attorneys at law marketing, promoting and benefiting from this fraudulent abusive traffic scheme and thus swindling the ignorant, innocent, naive public with the assistance of the alleged, defacto, bankrupt government?

122. For the record ~~can~~, is this fraudulent, abusive, scheme legal plunder?

123. For the record, factually what is the meaning and definition of "legal plunder"?

124. For the record, will the promoters of this fraudulent traffic scheme or legal plunder face injunctions, penalties, and, when appropriate, criminal charges as well as, jail time?

125. For the record, factually what is the meaning and definition of "crimes against humanity"?

126. For the record, factually what is the meaning and definition of "humanity"?

127. For the record, am I, Jeffrey Stuart, Katz legally capable or incapable of defending myself in this alleged hearing?

128. For he record, do I Jeffrey Stuart, Katz have standing in judicio?

129. For the record, factually can these alleged, hearings be "dismissed for lack of standing"?

130. For the record, factually "how is standing achieved" in this so-called Court?

131. For the record, factually what is the meaning and definition of "standing"?

132. For the record, factually what is the meaning and definition of "dismissed"?

133. For the record, factually can these alleged, hearings be "dismissed for lack of understanding"?

134. For the record, factually what is the meaning and definition of "expatriation"?

135. For the record, can anyone come forward to dispute that I believe in history of the Republic of Texas?

Pursuant to March 17, 1836 the Constitution of the Republic of Texas;

General Provisions Sec. 6.

"All free white persons who shall emigrate to this Republic, and who shall, after a residence of 6 months, make oath before some competent authority that he intends to reside permanently in the same, and shall swear to support this Constitution, and that he will bear true allegiance to the Republic of Texas, shall be entitled to all the privileges of citizenship."

136. For the record, since I willfully, accepted an Oath in support of the Republic of Texas, how is it possible for this purported Court, and or its' AGENT, ACTOR GUENTHER et. al. to claim jurisdiction and then force ME to advocate the defacto, bankrupt, UNITED STATES and or the fraudulent, bankrupt STATE OF TEXAS, which are legal fictions and DO NOT EXIST?

137. For the record, is it true in "The American Constitution – Its Origin and Development" by Alfred H. Kelly and Winfred A. Harbison of Wayne State Univ., © 1963, Library of Congress Catalog No. 63-8030, on P. 365 it states; "... Many antislavery-minded Northerners watched the aggressive foreign policies of Tyler and Polk with growing resentment. They looked upon the annexation of Texas, consummated in 1845 by Tyler and Calhoun, as a bold - faced attempt to increase the "slavocracy's" influence in the Union. They denounced as grossly unconstitutional the annexation of Texas by joint resolution of Congress, a device resorted to when the ratification by the required. two thirds majority of the Senate appeared to be impossible of attainment. Texas they said, was a foreign state and could be dealt with only by treaty. They denounced as a mere sophistry the administration argument that since Texas was admitted as a state Congress possessed the requisite power to act. The constitutional objection to annexation of a foreign state by joint resolution had some theoretical merit. To have complied with every constitutional technicality, annexation should have been preceded by a treaty with Texas as a foreign nation followed by an enabling act and subsequent joint resolution admitting the state of Texas to the Union...."?

138. For the record, is it true in "An Encyclopedia of World History" compiled and edited by William L. Langer, a Coolidge Prof. of History, Harvard Univ., © 1952, Library of Congress Catalog No. 52-9589 on P. 821 it states; "MEXICO – 1836, Mar 2. Americans who had colonized Texas opposed direct Mexico control, proclaimed a republic, and maintained their independence, defeating and capturing San Anna at San Jacinto (Apr. 21)."

And "1846 – 1848. THE EXPANIONIST POLICY OF THE UNITED STATES, boundary disputes, the question of

Texas, and unsettled claims had created strained relations between the United States and Mexico, and the annexation of Texas by the United States (1845, Mar. 1) led to war between the two nations (p. 773). Mexico was totally defeated, and its capital occupied (1847, Sept. 14)." And,

"1848, Feb. 2. By the Treaty of Guadalupe Hidalogo, Mexico ceded Upper California, New Mexico and the northern portions of Sonora, Coahuila and Tamaulipas, the United States paying $15,000,000 and assuming payment of claims against the Mexican government." And on p. 773 it states;

"1846 – 1848. WAR WITH MEXICO. The United States had many grievances against Mexico, while Mexico could not forgive the United States for the annexation of Texas. Polk was determined to have New Mexico preferably by peaceful means, but when Slidell's mission to Mexico for the purpose of purchasing territory failed. Nov. 1845 – Mar. 1846), Polk was prepared for war. By sending American troops into the disputed area between the Nueces and Rio Grande Rivers, he brought about a skirmish which enabled him to say that Mexico had "shed American blood on American soil." An army under Zachary Taylor invaded Mexico and won the battles of Palo Alto and Resaca de la Palma (May 8 - 9), took Monterey (May 24), and won a victory at Buenta Vista (Feb. 22 – 23, 1847).

Col. S. W. Kearny occupied Santa Fe (Aug. 18, 1846). Marching inland from Vera Cruz, Winfield Scott fought the battles of Cerro Gordo (Apr. 17 and 18, 1847), Churubusco (Aug. 20), Chapultepec (Sept. 12 & 13), And captured Mexico City (Sept. 14). On the Pacific an American squadron seized California ports." And on p. 774 it states; "Feb. 2. The Treaty of Guadalupe Hidalo closed the war with Mexico. Mexico gave up claims to Texas, recognized the Rio Grande as the boundary, and ceded New Mexico and California to the United States in return or $ 15,000,000 and the assumption of American claims against Mexico."?

139. For the record, factually what is the meaning and definition of "territory"?

140. For the record, did the alleged Court error when they held in Selden v. Vermilya, 2 Sandf. (N.Y.) 568, 593; and United Ins. Co. v. Scott, 1 Johns (N.Y.) 206, 114?

"No one should be held in a partnership against his will."

141. For the record, factually what is the meaning and definition of "partnership"?

142. For the record, factually what is the meaning and definition of "slavery"?

143. For the record, factually what is the meaning and definition of "jurisdiction"?

144. For the record, factually what is the meaning and definition of "venue"?

145. For the record, did the alleged Court error pursuant when it held in Stanard v. Olesen, 74 S.Ct. 768?

"No sanction can be imposed absent proof of jurisdiction."

146. For the record, did the alleged Court error when it held in Hagans v. Lavine, 415 US 528 at 533 (1974)?

"Once jurisdiction is challenged, it must be proven."

147. For the record, did the alleged Court mistake when it held in McNutt v. General Motors, 56 S.Ct. 780?

"If (an) allegation of jurisdiction facts are challenged by his adversary in an appropriate manor, he must support them with competent proof...the party alleging jurisdiction (must) justify his allegation by a preponderance of the evidence."

148. Did the alleged Court fail when it held in The State of Rhode Island v. The State of Massachusetts, 37 U.S. 709?

"Once the question of jurisdiction is raised: It must be considered and decided, before any court can move one step further ."

149. For the record, did the purported Court hold correctly in Harris v. American Legion, 162 F. Supp. 700?

"Jurisdiction can not be assumed ... but it is incumbent upon the plaintiff to allege in clear terms, the necessary facts showing jurisdiction, which must be proved by convincing evidence ." (citations omitted)

150. For the record, factually what is the meaning and definition of "jurisdiction"?

151. For the record, factually what is the significance or importance of proving or claiming "jurisdiction"?

152. For the record, factually what procedures exist to prove "jurisdiction"?

153. For the record, factually without subject, matter, jurisdiction, can the alleged hearing proceed?

154. For the record, can YOU disprove with lawful documents (9 Stat. 108) that the Republic of Texas was admitted into the Union on December 29, 1845 c.e., by virtue of a joint resolution of the United States Congress?

155. For the record, can YOU disprove that since the joint resolution by the United States Congress was fraudulent, the Common Law Court(s) of the Republic of Texas were fraudulently closed and as one of WE the People of the Republic of Texas I have been summarily denied access to OUR lawful constitutional court(s) against my will and intent of the law?

156. For the record, pursuant to the Texas Constitution Article 4 § 21, "The Secretary of State shall authenticate the publication of the laws." Will YOU provide an authenticate, certified, true and correct copy of any and all Constitution(s) for the State or Republic of Texas?

157. For the record, if an authenticate, certified, true and correct copy of any and all Constitution(s) for the State or Republic of Texas is not available what law are YOU following?

158. For the record, did the State of Texas Supreme Court in Cause 95-1002 dismiss the case for want of jurisdiction concerning the Republic of Texas and its' citizens?

159. For the record, are the qualifications of a "lawful contract" an offer, an acceptance, consideration and signatures by both parties?

160. For the record, can YOU provide any lawful documents which illustrates joinder between the legal fictions a.k.a. the PLAIINTIFFS and ME, Jeffrey Stuart, Katz?

161. For the record, are the above alleged referenced charges or disputes regarding a contract or (a) public tort(s)?

162. For the record, factually what is the meaning and definition of a "public tort"?

163. For the record, can YOU provide ME, with the lawful contract that obligates ME, to the STATE OF TEXAS, et. al.?

164. For the record did the alleged Court error when it held in Bank of U.S. v. Owens, 2 Peters, 539?
"A contract founded on a base consideration, or against good morals, is null and cannot be enforced by action."

165. For the record, factually what is the meaning and definition of a "base consideration"?

166. For the record, factually what is the meaning and definition of "against good morals"?

167. For the record did the purported Court error when it held in Henry v. Bank of Salina, 5 Hill (N.Y.) 523, 531?
"Crime vitiates everything which springs from it."

168. For the record, factually what is the meaning and definition of "vitiates"?

169. For the record, pursuant to the Texas Administrative Code are All CORPORATE entities written in upper case letters only?

TITLE 1 ADMINISTRATION

PART 4 OFFICE OF THE SECRETARY OF STATE

CHAPTER 79 CORPORATIONS

SUBCHAPTER C ENTITY NAMES

RULE § 79.31 Characters of Print Acceptable in Names

(a) Entity names may consist of letters of the Roman alphabet, Arabic numerals, and certain symbols capable of being reproduced on a standard English language typewriter, or combination thereof.

(b) Only upper case or capital letters, with no distinction as to type face or font, will be recognized.

(c) Arabic numerals include 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9.

(d) The symbols recognized as part of a name may include ! " $ % ( ) * ? # = @ [ ] / + & and -.

Source Note: The provisions of this §79.31 adopted to be effective Jan. 1, 1976; amended to be effective Sept. 15, 1981, 6 Tex Reg 3249; amended to be effective Jan. 2, 1992, 16 Tex Reg 7469

170. For the record, since the name of the alleged DEFENDANT is written in capital letters, is the alleged accused a corporation, pursuant to RULE § 79.31?

171. For the record, are the Texas Traffic Regulations contained within the civil statutes and not the Texas Penal Code, therefore do not fall within the Jurisdiction of the CITY OF DALLAS MUNICIPAL COURT or a Justice Court pursuant to the acts of the 59th Texas Legislature (1965), vol. 2, page 317, ch. 722?

172. For the record, what are the differences between civil and criminal cases?

173. For the record, can YOU contradict, since the issuance of a traffic citation is a Civil Complaint and must be filed in a court of appropriate Civil Jurisdiction, YOU are in want of jurisdiction concerning this declared Texian National Citizen?

174. For the record, how can I possibly acknowledge AFFIANT, SYLVIA PEREZ, when the alleged complaints are not signed "under pains and penalties of perjury" as the alleged TEXAS CONSTITUTION demands?

175. For the record, is the complaint by an Affiant, an affidavit?

176. For the record, factually what is the meaning and definition of "under pains and penalties of perjury"?

177. For the record, factually what is the meaning and definition of "perjury"?

178. For the record, can YOU dispute the following statement; the commercial record has been carefully crafted and purposefully falsified by AGENT, ACTOR GUENTHER et. al. with willful intent to convert ME, Jeffrey Stuart, Katz, a living man, into an ACTOR, a "LEGAL FICTION" as a "DEFENDANT" to secure an judgement in "fraudulent, unlawful funds" employing fictional "PLAINTIFFS" for enrichment, an honorarium (FRNs), for the Crown's AGENTS, the "ESQUIRES" also known as attorneys at law, which is against the intent of Texas law?

179. For the record, factually what is the meaning and definition of "carefully crafted"?

180. For the record, factually what is the meaning and definition of "willful"?

181. For the record, factually what is the meaning and definition of an "ESQUIRE"?

182. For the record, factually what is the meaning and definition of "Fellow"?

183. For the record, factually what is the meaning and definition of "Master"?

184. For the record, factually what is the meaning and definition of "Knight"?

185. For the record, did the purported Court hold correctly in Jewett Car. Co. v. Kirkpatrick, 107 Fed. 622, 624? "Whatever is offered by the defendant as sufficient to defeat the cause of action stated in the plaintiff's declaration, either by way of denial, justification, or confession, is a plea."

186. For the record, factually how is possible to be something I am not?

187. For the record, factually why would I want to be something that I am not?

188. For the record, will the PLAINTIFFS pay ME to be an ACTOR?

189. For the record, factually if someone is mistakenly accused of a criminal offense, is it possible to respond without

pleading?

190. For the record, factually what is the meaning and definition of "pleading"?

191. For the record, factually is this what is meant by "the legal system"?

192. For the record, factually who controls "the legal system"?

193. For the record, is ownership or control of the law a privilege or a right?

194. For the record, has West Publishing Co. copyrighted the laws of the United States and the several states?

195. For the record, who owns West Publishing Co.?

196. For the record, factually what is the meaning and definition of "insane"?

197. For the record, if an entity pretends or believes or acts as if it has ownership to something that it does not own, (w)could that be construed as insane?

198. For the record, if an entity acts as it has ownership to something that it does not, is that a fraud?

199. For the record, why would an entity pretend to own or control the legal system if it were not for profit and gain?

200. For the record, Is the profit gained from this action or theft, a crime against WE the People, the rightful owners of the Law?

201. For the record, can YOU describe the symbiotic relationship between bankers and attorneys at law?

202. For the record, did the United States Inc. declare bankruptcy in Geneva, Switzerland in 1930?

203. For the record, can YOU provide the minutes from the Geneva Convention that disproves the U.S. bankruptcy?

204. For the record, was this the first time the United States government or another entity representing itself as the U.S. government declared bankruptcy?

205. For the record, can YOU factually describe the significance of the Erie RR v. Thompkins decision?

206. For the record, did the bankruptcy of the United States government commence when Franklin D. Roosevelt (FDR) declared, "The Banking Holiday" and proceeded to take all U.S. gold coins out of circulation?

207. For the record, did FDR pick up the "Great Registers" and all property was used as collateral so the Federal Reserve Bank (FRB) would issue Federal Reserve Notes?

208. For the record, did FDR in his inauguration speech ask for the War Powers Act?

209. For the record, what is the significance of the War Powers Act?

210. For the record, did / does the War Powers Act, initiate Martial Rule throughout the land?

211. For the record, did FDR also include the U.S. Citizens in Trading with the Enemy Act?

212. For the record, when FDR had WE the People's the gold confiscated, was this under the Federal Reserve Bank's direction?

213. For the record, when the corporate United States declared itself to be in the state of bankruptcy, did it declare bankruptcy for all its subsidiaries, the state corporate governments, which did not have the ability to vote on the bankruptcy?

214. For the record, is the bankruptcy of the U.S. and its subsidiaries, the reason for the social policies that ensued?

215. For the record, does the Social Security Administration (SSA) inform the applicant that when (s) he applies for Social Security that they become a debtor and part of the bankruptcy of the U.S. and its' subsidiaries?

216. For the record, when one does not disclose or is not truthful in a contract is the contract null and void?

217. For the record, factually what was the historical significance of the "New Deal"?

218. For the record, factually what is the meaning and definition of a "creditor"?

219. For the record, factually what is the meaning and definition of a "debtor"?

220. For the record, is it possible for ME, Jeffrey Stuart, Katz to participate in this purported hearing when I am not party to the bankruptcy of the United States and its' subsidiaries?

221. For the record, are the actions of most public servants today, demonstrations of sedition and treason since they do not defend and honor the Constitutions?

222. For the record, what is the penalty for treason?

223. For the record, what is the penalty for sedition?

224. For the record, did the Uniform Commercial Code (UCC) become the "Law of the Land"?

225. For the record, does the preface of the 1990 Official Text of the Uniform Commercial Code, 12th edition, state? "The Code was originally approved by its sponsors and the American Bar Association in 1952, and was revised in 1958 to incorporate a number of changes that had been recommended by the New York Law Revision Commission and other agencies. Subsequent amendments that were deemed desirable in the light of experience under the Code were approved by the Permanent Editorial Board in 1962 & 1966..."

226. For the record, did the aforementioned groups and associations of private lawyers start working on the UCC between 1930 and 1940?

227. For the record, is the UCC the merchant's code for the administration of the bankruptcy of the United States and its' subsidiaries?.

228. For the record, is the UCC now the new "Law of the Land", as far as the Courts are concerned?

229. For the record, did the Legal Committee of lawyers put everything under the UCC such as; Negotiable Instruments, Security, Sales, Contracts - Agreements, etc.?

230. For the record, factually what is the meaning and definition of "uniform"?

231. For the record, does "uniform" mean that the laws are uniform from state to state, as well as being uniform within the District of Columbia?

232. For the record, factually what is the meaning and definition of "the District"?

233. For the record, was the intent of the UCC to uniform the "Law of the Land" from state to state?

234. For the record, how did the adoption of the UCC (a) effect the previous laws of the United States?

235. For the record, did the states have no choice or say, but could only adopt the newly formed UCC as the law as the states fully understood that they had to administrate the bankruptcy?

236. For the record is possible for ME, Jeffrey Stuart, Katz to participate in this purported hearing when I would compromise my truly, sincerely held religious beliefs and spirituals training, as set forth by the U.S. Congress at 96. Stat 1211 and elucidated to by the U.S. Supreme Court at Seger v. U.S., 380 US 163, the Appellant is collaterally estopped from making oaths? The term "affirmation", being an alternative for those who are atheists and want no part of my G-d. Affirmation is simply another term for the word "oath".

237. For the record, was the Court in error when it held in Gordon v. Idaho, 778 F2d 1397 (9th Cir. 1985)?

"The free exercise of religion in religious objections to sworn statements, written or oral, applied to state courts: And we emphasize that it is the 'least restrictive means' inquiry, which is the critical aspect of the free exercise analysis" Gordon. Supra, at pg. 1400 citing Callahan v. Woods, 736 F 2d 1269 at 1272.

"... by using the least restrictive means to further compelling state interests than means to further compelling state interests that impinge on such free exercise." Gordon, supra, at pgs. 1400 – 1401, citing Callahan v. Woods, supra at 1273.

"The 1st Amendment's guarantee of the free exercise of religious requires that our procedural rules be interpreted

flexibly to protect sincerely held religious beliefs and practices." Gordon, Supra, at Pg. 1400, Callahan v. Woods, supra at 1273.?

238. For the record, factually what is the meaning and definition of "least restrictive means"?

239. For the record, factually what is the meaning and definition of "interests"?

240. For the record, factually what is the meaning and definition of the "interests of justice"?

241. For the record, factually what are the "interests of justice"?

242. For the record, factually who gains from the "interests of justice"?

243. For the record, factually have some prison become self-sufficient?

244. For the record, factually are any prisoners meant to sleep outside intents?

245. For the record, factually when someone does his or her time, sitting in jail, is this considered "time served" and the prisoner fulfilled their sentence?

246. For the record, factually when one is kidnapped and placed in County Jail for a non-jailable offense, to extort FRNs which it cannot have, is that time-out?

247. For the record, factually are the "interests of justice" responsible to WE the People?

248. For the record, is the attempt to compel ME in the MUNICIPAL COURT OF THE CITY OF DALLAS, to surrender one right to claim another, a violation of the Simon's doctrine, Simon v. U.S. 390 US 389, by denying my right to freely exercise my religious beliefs and spiritual training, in a legal action, where they are many willful and premeditated violations of my inalienable and unalienable rights, as well as, the due process of law?

249. Did the alleged Court error in Arizona Grocery Co. v. Atchison, T. & S.F. Ry. Co., 284 U.S. 370, 52 S.Ct. 183? "...a party could rely upon the representations made by government agency."

250. For the record, did the purported Court erroneously hold in Moser v. United States, 341 U.S. 41, 71 S.Ct.1257? "that such reliance could constitute a defense to actions taken by government."

251. For the record, was the alleged Court correct when it held in Burgett v. Texas, 389 U.S. 109? "A conviction obtained where the accused was denied counsel is treated as void for all purposes." And "Lack of Counsel of choice" can be conceivably even worse than no counsel at all, or having to accept counsel beholden to one's adversary."

252. For the record, did the purported Court hold correctly in Alabama v. Shelton, 535 U.S. 654 (2002)? "Incarceration cannot be imposed for violation of a misdemeanor probation if the defendant did not have counsel or properly waive counsel at the underlying conviction."

253. For the record, did the purported Court correctly hold in Mempha v. Rhay, 389 U.S. 128? "The right to counsel exists not only at the trial thereof, but also at every sage of a criminal proceeding where substantial rights of a criminal accused my be affected."

254. For the record, did JUSTICE BLACK fail when he wrote in Von Moltke v. Gillies, 332 U.S. 708, 723-24 (1948)? "The Constitution does not contemplate that prisoners shall be dependent upon government agents for legal counsel and aid, however conscientious and able those agents may be."

255. For the record, is the MUNICIPAL COURT of the CITY of DALLAS arraigning criminal defendants without the benefit of counsel, in direct violation of the 6th Amendment and the holding of the U.S. Supreme Court in Johnson v. Zerbst, 304 U.S. 458, 468 (1938)?

256. For the record, were YOU aware that the practice of the prosecutor negotiating directly with uncounseled defendants violates the American Bar Association Prosecution Function, Standard 3-3.10 Role in First

Appearance & Preliminary Hearing:

(a) A prosecutor ... should not communicate with the accused unless a waiver of counsel has been entered, except for the purpose of aiding in obtaining counsel or in arranging for the pretrial release of the accused. A prosecutor should not fail to make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining , counsel and has been given reasonable opportunity to obtain counsel.

257. For the record, was the alleged Court correct when it held in Johnson v. Avery, 393 U.S. 483, 498?
"The cooperation and help of laymen, as well as lawyers, is necessary if the right of reasonable access to the courts is to be available."

258. For the record, did the purported Court mistake and or fail when it held in Brotherhood of Railroad Trainmen v. Virginia ex re Virginia State Bar 377 U.S. 1, 7?
"A state cannot, by invoking the power to regulate the professional conduct of attorneys, infringe in any way the right of indivlduals and the public to be fairly represented in lawsuits authorized Congress to effectuate a basic public interest. Laymen cannot be expected to know how to protect their rights when dealing with practiced and careful adversaries."? .

259. For the record, was the alleged Court correct when it held in Gideon v. Wainright, 372 U.S. 335?
"For them to associate together to help one another to preserve and enforce rights granted them under federal laws cannot be condemned as a threat to legal ethics."? AND "it is fundamental and essential to a fair trial" that "the right to aid of counsel is of fundamental character."

260. For the record, did the purported Courts error when they held in Argersinger v. Hamlin, Sheriff 407 U.S. 425; and Brotherhood of Trainmen v. Virginia ex rel. Virginia State Bar, 377 U.S. 1?
"Litigants can be assisted by unlicensed laymen during judicial proceedings."

261. For the record, did these alleged Courts error when they held in the following cases Pucket v. Cox, 456 2nd 233; Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); and Picking v. Pennsylvania R. Co., 151 Fed 2nd 240?
"Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers."

262. For the record, factually what is the meaning and definition of the "high standards of perfection of lawyers"?

263. For the record, factually and historically what reputations do lawyers and or attorneys have or enjoy?

264. For the record, factually how are reputations formulated?

265. For the record, factually are alleged judges, glorified attorneys at law or lawyers?

266. For the record, factually are alleged judges members of the Bar Associations?

267. For the record, factually how is it possible to receive a fair and impartial hearing when the judge and prosecuting attorney are members of the same private club a.k.a. the Bar Association?

268. For the record, factually are alleged judges the best or the worst of the lawyers or attorneys at law?

269. For the record, is their a difference, between the "high standards of perfection of lawyers" and what We the People perceive of lawyers' standards, or morals?

270. For the record, are the perceptions and beliefs of the WE the People based on our collective experiences and facts, therefore these perceptions and beliefs are valid, true and factual?

271. For the record, factually what is the meaning and definition of a "myth"?

272. For the record, factually is it a myth that We the People live in the "Land of the free and home to the brave"?

273. For the record, factually are YOU truly free if YOU MUST have government permission to live YOUR life?

274. For the record, factually is it a myth that the DALLAS POLICE DEPT. is to serve and protect We the People?

275. For the record, did this Court error when it held in Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938)? "Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers, which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment."

276. For the record, factually what is the meaning and definition of "litigant(s)"?

277. For the record, factually is it helpful if the litigant(s) is / are alive, well, conscious and have the ability to speak?

278. For the record, factually if the litigant(s) do not or cannot communicate, how is it possible to know or understand the litigant(s) purpose or intentions?

279. Did the following alleged Courts All error when they held in the following cases NAACP v. Button, 371 U.S. 415; United Mineworkers of America v. Gibbs, 383 U.S. 715; and Johnson v. Avery, 89 S. Ct. 747 (1969)? "Members of groups who are competent non-lawyers can assist other members of the group achieve the goals of the group in court without being charged with "unauthorized practice of law."

280. For the record, factually what is the meaning and definition of "unauthorized practice of law"?

281. For the record, factually what is the meaning and definition of "authorized practice of law'?

282. For the record, is the American Bar Association et. al. in actuality a private club, where their members prey on innocent, naïve members of the public, in coordination with an defacto, bankrupt government?

283. For the record, factually who or what can or could decide what is "authorized or unauthorized"?

284. For the record, factually must the authority be lawful, in order to decide if something is authorized or not?

285. For the record, factually if something does not exist, how is it possible for something to act?

286. For the record, are the fictions' actions promoted, fostered by an elite, private unlawful association or cult?

287. For the record, do YOU, as an ASST. CITY ATTORNEY represent the STATE OF TEXAS, the COUNTY OF DALLAS and the CITY OF DALLAS?

288. For the record, how is it possible for YOU to represent a non-entity, a legal fiction that does not exist or live?

289. For the record, how is it possible for a non-entity to be an entity when it does not think, speak, act or exist?

290. For the record, are YOU and YOUR associates legally insane or just insane?

291. For the record, would it be a shock to conscious of the average, common (wo) man to learn the following facts?

7 Am Jur 2d § 5 - Duties of Office

"An attorney at law has both the public and private obligation because the attorney is sworn to act with all good fidelity toward his or her client and the court. The attorney's private obligation comprise those duties owed to his or her client; the attorney's public consists of the obligation to aid the administration of justice and to uphold the dignity of the court and respect its authority. Where an attorney's duties to his or her client conflict with those owed to the public as an officer of the court in the administration of justice, the former [client] must yield to the latter [court]. An attorney may not advise a client to disrespect a court order." AND

7 C.J.S. § 4. Nature and Duties of Office

An attorney is an officer of the court with an obligation to the courts and the public as well as to his clients, and his duty is to facilitate the administration of justice.

An attorney does not hold an office of public trust, in the constitutional or statutory sense of that term, and strictly speaking, he is not an officer of the state or of a governmental subdivision thereof. Rather, as held in many

decision, he is an officer of the court, before which he has been admitted to practice. An attorney is not the court or one of its ministerial officers, or a law enforcement officer. He is however, in a sense an officer of the state, with an obligation to the courts and to the public no less significant than his obligation to his clients. Thus, an attorney occupies a duel position which imposes dual obligations. His first duty is to the courts and the public NOT to the client, and whenever the duties to his client conflict with those he owes as an officer of the court in the administration of justice, the former [client] must yield to the latter [court].

292. For the record, factually what is the meaning and definition of "fidelity"?

293. For the record, factually what is the meaning and definition of "infidelity"?

294. For the record, factually what is the meaning and definition of "the dignity of the court"?

295. For the record, factually what is the meaning and definition of "dignity"?

296. For the record, factually is it possible for the alleged Court to have dignity, when it purports to represent, something (a legal fiction, an artificial entity) that does not exist?

297. For the record, factually would any Court appointed attorney portray or depict her or himself that (s)he represents my best interests, when it clear, plain and evident that his obligation is to the pretended Courts and the administration of justice, which surely demonstrates, his or her infidelity, inconsistency, fraud and misrepresentation of the facts?

298. For the record, is the Court appointed attorney at law, in actuality an enemy spy for my adversary, since (s)he is bought and paid, bribed, and a willing accomplice, in an attempt to defraud ME, Jeffrey Stuart, Katz and (s)he will dutifully lie and deceive ME, for his, her imaginary master?

299. For the record, factually what is the meaning and definition of an "enemy spy"?

300. For the record, factually what is the meaning and definition of "attorney at law"?

301. For the record, factually what is the meaning and definition of "attorn"?

302. For the record, factually what is the meaning and definition of "administration of justice"?

303. For the record, factually why is "Lady Justice" depicted as blind?

304. For the record, factually how, who or what blinded "Lady Justice"?

305. For the record, factually what is "Lady Justice" incapable of seeing?

306. For the record, when "Lady Justice" cannot see, are the "Scales of Justice" unfairly tilted one way or another?

307. For the record, factually what are the "Scales of Justice"?

308. For the record, factually can true justice be found in a private legal system?

309. For the record, factually what is the meaning and definition of "justice"?

310. For the record, factually what is the meaning and definition of "jurisprudence"?

311. For the record, are the scales of justice slanted to the advantage of attorneys since the alleged Courts are operated in most cases by attorneys for their profit and gain?

312. For the record, factually do attorneys at law promote the legal system?

313. For the record, factually what is the meaning and definition of "malpractice"?

314. For the record, factually what is the meaning and definition of "public trust"?

315. For the record, factually what is the meaning and definition of "legal fiction"?

316. For the record, factually what is the meaning and definition of "defendant"?

317. For the record, factually what is the meaning and definition of "enemy combatant"?

318. For the record, how is it possible for YOU to represent the STATE OF TEXAS, the COUNTY OF DALLAS and the

CITY OF DALLAS, since All of the alleged PLAINTIFFS, are legal fictions and do not exist?

319. For the record, factually can YOU prove the existence of the above referenced legal fictions, or artificial entities?

320. For the record, who do YOU, as ASST. CITY ATTORNEY report to?

321. For the record, did Thomas Jefferson state correctly the following?

"Under the law of nature, all men are born free, every one comes into the world with a right to his own person, which includes the liberty of moving and using it at his own will. This is what is called personal liberty, and is given him by the Author of nature, because it is necessary for his own sustenance".

322. For the record, do YOU appreciate and comprehend the magnitude of Thomas Jefferson's statement?

"A free people [claim] their rights as derived from the laws of nature, and not as the gift of their chief magistrate".

323. For the record, did Samuel Adams comfort YOU as he did ME, when he correctly enunciated the following?

"If men, through fear, fraud, or mistake, should in terms renounce or give up any natural right, the eternal law of reason and the grand end of society would absolutely vacate such renunciation. The right to freedom being the gift of G-d, it is not in the power of man to alienate this gift and voluntarily become a slave".

324. For the record did the purported Court error when it held in Robin v. Hardaway, 1 Jefferson 109; 1 Am Jur 2d 14?

"A legislature must not obstruct our obedience to Him from whose punishments they cannot protect us".

325. For the record, factually what law governs US All?

326. For the record, factually what are the "Laws of G-d"?

327. For the record, are the "Laws of G-d" also known as "the Laws of Nature"?

328. For the record, factually what is the meaning and definition of the "Law of the Land"?

329. For the record, prior to the UCC factually was the "Law of the Land" also known as "the Common Law"?

330. For the record, factually is the American Common Law based on the Laws of Nature?

331. For the record, can "the Common Law" be described as "common sense law"?

332. For the record, factually what is the meaning and definition of "Roman Civil Law"?

333. For the record, factually what is the meaning and definition of "Napoleonic Law"?

334. For the record, factually what is the meaning and definition of "Administrative Law"?

335. For the record, factually what is the meaning and definition of the "Public Law'?

336. For the record, factually what is the meaning and definition of the "Private Law"?

337. For the record, factually what is the meaning and definition of the "Law of the Merchants"?

338. For the record, factually what is the meaning and definition of the "Public Policy"?

339. For the record, factually what are "Maxims of Law"?

340. For the record, is this American Maxim of Law still adhered to?

"The main object of government is the protection and preservation of personal rights, private property, and public liberties, and upholding the law of G-d."

341. For the record, are YOU familiar with this American Maxim of Law?

"A frequent recurrence to fundamental principles, and a firm adherence to justice, virtue, and original law, are indispensably necessary to preserve the blessings of liberty and good government."

342. For the record, factually what is the meaning and definition of "good faith"?

343. For the record, factually what are the characteristics of a "good government"?

344. For the record, factually what are the characteristics of a "free government"?

345. For the record, factually what is the meaning and definition of a "free people"?

346. For the record, factually what is the meaning and definition of "free"?

347. For the record, factually what are the characteristics of a "bad government"?

348. For the record, factually what is the meaning and definition of "bad faith"?

349. For the record, did John Quincy Adams articulate the truth in the following statement?

"There is danger from all men. The only maxim of a free government ought to be to trust no man living with power to endanger the public liberty".

350. For the record, is it fair and evident to YOU, that the legal profession exerts pressure and endangers WE the People?

351. For the record, factually was Sir Edward Coke, the famous English jurist, judge, statesman, and author of Coke's 4 Institutes, which are the foremost, work dealing with the Maxims of Law?

352. For the record, did Sir Edward Coke in describing the Maxims of Law state, "A maxim is so called because its dignity is chiefest, and its authority the most certain, and because it is universally approved by all"?

353. For the record, in 1814, did Thomas Jefferson, one of the Fathers of the united States of America write to Dr. Thomas Cooper regarding law and Coke's Institutes state, "The work is executed with so much learning and judgment, that I do not recollect a single position in it has even been judicially denied ... It may still be considered as the fundamental code of English law"?

354. For the record, do YOU acknowledge 4 Coke, 78?

"The frequency of an act effects much."

355. For the record, do YOU acknowledge 4 Coke, 43?

"Where there is no act, there can be no force."

356. For the record, do YOU acknowledge 8 Coke, 291?

"Acts indicate their intention."

357. For the record, do YOU acknowledge 8 Coke, 146b?

"External acts indicate undisclosed thoughts."

358. For the record, do YOU acknowledge 4 Coke, 107?

"Opinion is of 2 kinds, namely, common opinion, which springs up among grave and discreet men, and which has the appearance of truth, and opinion which springs up only among light and foolish men, without the semblance of truth."

359. For the record, do YOU acknowledge 4 Coke, 24b?

"What I cannot do by myself, I cannot by another."

360. For the record, do YOU acknowledge 9 Coke, 77?

"A delegate cannot delegate; an agent cannot delegate his functions to a subagent without the knowledge or consent of the principal; the person to whom an office or duty is delegated cannot lawfully devolve the duty of another; unless he be expressly authorized so to do."

"A deputy cannot have (or appoint) a deputy."

361. For the record, do YOU acknowledge 2 Coke, 73?

"The expressed agreement of the parties overcomes or prevails against the law, because the agreement of the parties makes the law of the contract."

362. For the record, do YOU acknowledge 12 Coke, 7?

"When the form is not observed, it is inferred that the act is annulled."

363. For the record, do YOU acknowledge 6 Coke, 53?

"By the same mode by which a thing is bound, by that it is also released or dissolved."

364. For the record, do YOU acknowledge 2 Coke, 51?

"That power is to no purpose which never comes into act, or which is never exercised."

365. For the record, do YOU acknowledge 5 Coke, 16?

"When anything is commanded, everything by which it can be accomplished is also commanded."

366. For the record, do YOU acknowledge 1 Coke, 99a?

"He who bears the burden of a thing should also receive the advantage or benefit arising from it."

367. For the record, do YOU acknowledge 5 Coke, 57?

"A vague and uncertain cause is not a reasonable cause."

368. For the record, do YOU acknowledge 9 coke, 47a?

"That is certain which can be made certain."

369. For the record, do YOU acknowledge 4 Coke, 5?

"Too great subtlety is disproved of in law; for such pretense of certainty confounds true and legal certainty."

370. For the record, do YOU acknowledge 3 Coke, 81?

"Unusual clauses always excite a suspicion."

371. For the record, do YOU acknowledge 7 Coke 28a?

"The jurisprudence of the common law is a science social and comprehensive."

372. For the record, do YOU acknowledge 10 Coke, 48?

"No one can confirm before the right accrues to him."

373. For the record, do YOU acknowledge 8 Coke, 16?

"There are 2 instruments for confirming or impugning all things, reason and authority."

374. For the record, do YOU acknowledge 10 Coke, 52?

"It is immaterial whether a man gives his assent by words or by acts and deeds."

375. For the record, do YOU acknowledge 5 Coke, 80?

"They who consent to an act, and they who do it, shall be visited with equal punishment."

376. For the record, do YOU acknowledge 8 Coke, 169a?

"To make laws agree or harmonize with laws is the best mode of interpreting them."

377. For the record, do YOU acknowledge 8 Coke, 117b?

"The best interpreter of a statute is [all its parts being considered] the statute itself."

378. For the record, do YOU acknowledge 6 Coke, n?

"Words are to be interpreted according to the subject – matter?

379. For the record, do YOU acknowledge 8 Coke, 169?

"The best mode of interpretation is to interpret laws so that they may accord with each other."

380. For the record, do YOU acknowledge 10 Coke, 101?

"The language of a statute is to be understood and interpreted like ordinary spoken language."

381. For the record, do YOU acknowledge 10 Coke, 102?

"Extortion is a crime when, by color of office, any person extorts that which is not due, or more than is due, or before the time when it is due."

382. For the record, do YOU acknowledge 5 Coke, 99?

"The instigator of a crime is worse than he who perpetrates it."

383. For the record, do YOU acknowledge 7 Coke, 14?

"An outlaw is, as it were, put out of the protection of the law."

384. For the record, do YOU acknowledge 4 Coke, 18?

"A custom, though it be of great authority, should never prejudice manifest truth."

385. For the record, do YOU acknowledge 4 Coke, 78?

"Things which are done contrary to the custom and usage of our ancestors neither please nor appear right."

386. For the record, do YOU acknowledge 4 Coke, 38?

" A reasonable custom is to be obeyed as a law."

387. For the record, do YOU acknowledge 4 Coke, 78?

"A custom of the truest antiquity is to be retained."

388. For the record, do YOU acknowledge 9 Coke, 79a?

"The refusal of money tendered releases him who tenders it."

389. For the record, do YOU acknowledge 3 Coke, 78?

"What otherwise is good and just, if it be sought by force and fraud, becomes bad and unjust."

"Deceit and fraud shall not defend, excuse benefit any man."

390. For the record, do YOU acknowledge 12 Coke, 124?

"Deeds contain many things which are prohibited to be done."

391. For the record, do YOU acknowledge 9 Coke, 137a?

"In the delivery of writing (i.e. deeds), not what is said but what is done is to be considered."

392. For the record, do YOU acknowledge 5 Coke, 99?

"Discretion is to discern through law what is just."

393. For the record, do YOU acknowledge 11 Coke, 10?

"Let every one employ himself in what he knows."

394. For the record, do YOU acknowledge 2 Coke, 73?

"Error artfully disguised (or colored) is, in many instances, more probable than naked truth; and frequently error overwhelms truth by its show of reason."

395. For the record, do YOU acknowledge 11 Coke, 75?

"The multitude of those who err is no protection [or excuse] for error."

396. For the record, do YOU acknowledge 6 Coke, 40?

"The progress of events shows many things which, at the beginning, could not be guarded against as foreseen."

397. For the record, do YOU acknowledge 7 Coke, 40b?

"Things manifest and plain truths do not require proof."

398. For the record, do YOU acknowledge 3 Coke, 40?

"Principles prove, they are not proved."

399. For the record, do YOU acknowledge 5 Coke, 49?

"Simplicity is favorable to the law, and too much subtlety is blameworthy in law."

400. For the record, do YOU acknowledge 5 Coke, 8?

"Simplicity is favorable to the law, and too much subtlety in law is to be reprobated."

401. For the record, do YOU acknowledge 10 Coke, 126?

"Extremities, or mere subtleties of law, are not rules of law, [are not law]."

402. For the record, do YOU acknowledge 3 Coke, 36?

A fiction of law injures no one."

403. For the record, do YOU acknowledge 11 Coke, 90?

"The law makes use of a fiction where equity subsists."

404. For the record, do YOU acknowledge 9 Coke, 53?

"Good faith does not suffer the same thing to be demanded twice; and in making satisfaction [for debt or demand] it is not allowed to be done more than once."

405. For the record, do YOU acknowledge 2 Coke, 61?

"The government cannot load a with imposition against his will or consent."

406. For the record, do YOU acknowledge 1 Coke 177?

"Ignorance of the facts excuses; ignorance of the law excuses not. Every man must be taken to be cognizant of the law; other wise there is no saying to what extent the excuse of ignorance may not be carried."

407. For the record, do YOU acknowledge 11 Coke, 6b?

"Extreme harm does not harm."

408. For the record, do YOU acknowledge 8 Coke, 291?

"Outward acts indicate the inward intent."

409. For the record, do YOU acknowledge 6 Coke, 1?

"Transactions between strangers may benefit, but cannot injure those who are not parties to them."

410. For the record, do YOU acknowledge 11 Coke, 52?

"He who concedes anything is considered as conceding that without which his concession would be void; or without which the thing itself could not exist."

411. For the record, do YOU acknowledge 7 Coke, 27a?

"A good judge should do nothing of his own arbitrary will, nor on the dictate of his personal inclination, but should decide according to law and justice."

412. For the record, do YOU acknowledge 6 Coke, 52a?

"He who determines any matter without hearing both sides, though he may have decided right, has not done justice."

413. For the record, do YOU acknowledge 8 Coke, 117b?

"It is unjust to decide or respond as to any particular part of a law without examining the whole of the law."

414. For the record, do YOU acknowledge 12 Coke, 74?

"That which is to be resolved once for all should be long deliberated upon."

415. For the record, do YOU acknowledge 8 Coke, 60?

"No court which has not a record can impose a fine, or commit any person to prison; because those powers belong only to courts of record."

416. For the record, do YOU acknowledge 10 Coke, 77?

"One who exercises jurisdiction out of his territory is not obeyed with impunity."

417. For the record, do YOU acknowledge 10 Coke, 73a?

"Jurisdiction is a power introduced for the public good, on account of the necessity of dispensing justice."

418. For the record, do YOU acknowledge 10 Coke, 73?

"We are ignorant of many things which would not be hidden from us if the reading of old authors was familiar to us."

419. For the record, do YOU acknowledge 5 Coke, 114?

"Not to believe rashly is the nerve of wisdom."

420. For the record, do YOU acknowledge 4 Coke, 304?

"What is not read is not believed."

421. For the record, do YOU acknowledge 8 Coke, 167a?

"The laws consist not in being read, but in being understood."

422. For the record, do YOU acknowledge 4 Coke, pref.?

"The practice of fixing and refixing [making and remaking] the laws is a most dangerous one."

423. For the record, do YOU acknowledge 2 Coke, 75?

"Many things have been introduced into the common law, with a view to the public good, which are inconsistent with sound reason."

424. For the record, do YOU acknowledge 13 Coke, 139?

"The welfare of the people is the supreme law."

425. For the record, do YOU acknowledge 5 Coke, 6?

"The law is the same respecting things which do not appear and those which do not exist."

426. For the record, do YOU acknowledge 7 Coke, 7?

"The reason of law changed, the law is also changed."

427. For the record, do YOU acknowledge 4 Coke, 166?

"Where there is no law, there is no transgression."

428. For the record, do YOU acknowledge 11 Coke, 100?

"Obedience is the essence of the law."

429. For the record, do YOU acknowledge 7 Coke, 13?

"Laws are made to no purpose, except for those that are subject and obedient."

430. For the record, do YOU acknowledge 7 Coke, 25?

"The laws of nature are most perfect and immutable; but in the condition of human laws there is nothing which can continue perpetually."

431. For the record, do YOU acknowledge 4 Coke, 16?

"A speech relating to the person is to be understood as relating to his condition or status."

432. For the record, do YOU acknowledge 4 Coke, 78?

"A continued usage is of great effect to establish a right."

433. For the record, do YOU acknowledge 4 Coke, 45?

"Evil deeds ought not to remain unpunished, and impunity affords continual incitement to the delinquent."

434. For the record, do YOU acknowledge 4 Coke, 15?

"The malicious plans of men must be avoided."

435. For the record, do YOU acknowledge 11 Coke, 74a?

"It is not lawful to do evil that good may come of it."

436. For the record, do YOU acknowledge 4 Coke, 107b?

"A name is not sufficient if a thing or subject for it does not exist by law or fact."

437. For the record, do YOU acknowledge 6 Coke, 66?

"Names are mutable, but things are immutable. A name may be true or false, or may change, but the thing itself always maintains its identity."

438. For the record, do YOU acknowledge 7 Coke, 12?

"Natural right is that which has the same force among all men."

439. For the record, do YOU acknowledge 10 Coke, 61?

"Necessity makes that lawful which otherwise is not lawful."

440. For the record, do YOU acknowledge 10 Coke, 52?

"It s immaterial whether a man gives his assent by words or by acts and deeds."

441. For the record, do YOU acknowledge 12 Coke 75?

"Things introduced contrary to the reason of law ought not to be drawn into a precedent."

442. For the record, do YOU acknowledge 1 Coke, 102?

"One absurdity being allowed [established as precedent], an infinity follow.

443. For the record, do YOU acknowledge 11 Coke, 626, 630?

"Subsequent laws repeal prior conflicting ones."

444. For the record, do YOU acknowledge 4 Coke, 72?

"No thing unjust is to be presumed in law."

445. For the record, do YOU acknowledge 1 Coke, 100?

"Nothing is so consonant to natural equity as to regard the will of the owner in transferring his own property to another."

446. For the record, do YOU acknowledge 8 Coke, 92?

"That which is mine cannot be lost, transferred to another, or taken away without my own act, consent, or forfeiture."

447. For the record, do YOU acknowledge 8 Coke, 127?

"Those sinning secretly are punished more severely than those sinning openly."

448. For the record, do YOU acknowledge 4 Coke, 43?

"No one is to be punished twice for the same offense."

449. For the record, do YOU acknowledge 4 Coke, 45?

"He threatens the innocent who spares the guilty."

450. For the record, do YOU acknowledge 5 Coke, 47?

"When the law gives anything, it gives the means of obtaining it (all incidents are tacitly given).

451. For the record, do YOU acknowledge 4 Coke, 92b, 93?

"Where the ordinary remedy fails, we must have recourse to what is extraordinary."

452. For the record, do YOU acknowledge 6 Coke, 65?

"A general rule is to be understood generally."

453. For the record, do YOU acknowledge 10 Coke, 49?

"The principle (or beginning) of anything is the most powerful part of a thing."

454. For the record, do YOU acknowledge 5 Coke, 6?

"As to things not apparent, and those not existing, the rule is the same."

455. For the record, do YOU acknowledge 9 Coke, 9?

"That is perfect which consists of all its parts."

456. For the record, do YOU acknowledge 8 Coke, 41?

"An integral part being taken away, the whole is taken away."

457. For the record, do YOU acknowledge 4 Coke, 18?

"What is like is not the same; for nothing which is like or similar to another is the same (i.e. no likeness is exact identity).

458. For the record, do YOU acknowledge 7 Coke, 5b?

"Where the law does not distinguish, neither ought we to distinguish."

459. For the record, do YOU acknowledge 5 Coke, 37?

A case omitted and forgotten is left to the disposal of the common law."

460. For the record, do YOU acknowledge 7 Coke. 1b?

"A trial should always be had where the jurors can be the best informed."

461. For the record, do YOU acknowledge 9 Coke, 20b?

"Truth fears nothing but concealment."

462. For the record, do YOU acknowledge 7 Coke, 24?

"Enemies are those whom we declare war upon, or who declare it against us; all others are traitors or pirates."

463. For the record, do YOU acknowledge 6 Coke, 76?

"No man is presumed to be forgetful of his eternal welfare, and particularly at the point of death."

464. For the record, do YOU acknowledge 5 Coke, 2?

"The meaning of the words is the spirit of the law."

465. For the record, do YOU acknowledge 6 Coke, 20?

"Equivocal words and those in a doubtful sense are to be taken in their best and effective sense."

466. For the record, do YOU acknowledge 5 Coke, 119?

"From the words of the law there must be no departure."

467. For the record, do YOU acknowledge 4 Coke, 13b?

"The sense of words is to be taken from the occasion of speaking them; and discourses are always to be interpreted according to the subject-matter."

468. For the record, do YOU acknowledge 4 Coke, 14?

"Those words which are spoken to one end ought not to be perverted to another."

469. For the record, do YOU acknowledge 4 Coke, 13?

"The meaning of words is two-fold, - mild and harsh; and words are always to be received in their milder sense."

470. For the record, do YOU acknowledge 8 Coke, 94?

"Words ought to be made subservient to the intent, not the intent to the words."

471. For the record, factually what are the "Doctrines of Law"?

472. For the record, factually what is the "Uniform Commercial Code"?

473. For the record, factually what is the meaning and definition of "Admiralty Law"?

474. For the record, factually is "Admiralty Law" the "Law of the Sea"?

475. For the record, is it possible for the "Law of the Sea" to be practiced on the Land?

476. For the record, which law or code is utilized in the MUNICIPAL COURT OF DALLAS?

477. For the record, am I, ME, presumed innocent until proven guilty in the MUNICIPAL COURT OF DALLAS?

478. For the record, does the MUNICIPAL COURT OF DALLAS guarantee All of my G-d given, unalienable rights?

479. For the record, what is the significance of the comments of James Madison?

"We have staked the whole of our political institutions upon the capacity of mankind for self-government, upon the capacity of each and all of US to govern ourselves, to control ourselves, to sustain ourselves according to the Ten Commandments of G-d".

480. For the record, if I am not considered innocent until proven guilty, and my rights are violated, is the MUNICIPAL COURT OF DALLAS a lawful Court?

481. For the record, what criteria would transform the MUNICIPAL COURT OF DALLAS into a lawful Court?

482. For the record, what is the purpose and function of the MUNICIPAL COURT OF DALLAS?

483. For the record, is the MUNICIPAL COURT OF DALLAS a Court of Record?

484. For the record, factually what is the meaning and definition of "nisi prius"?

485. For the record, what type of Court is the MUNICIPAL COURT OF DALLAS?

486. For the record, factually what is the meaning and definition of a "Court of Record"?

487. For the record, factually what is the meaning and definition of a "Court of Equity"?

488. For the record, factually what is the meaning and definition of a "Court of Law"?

489. For the record, factually what is the meaning and definition of a "Inferior Court"?

490. For the record, factually what is the meaning and definition of a "Superior Court"?

491. For the record, did the purported Court correctly hold in Williams v. U.S., 341 US 97, 101?

"It is the right of the accused to be tried in a constituted court, not a kangaroo court."

492. For the record, did the purported Court error when it held in The People vs. Van Rensselaer, 9 N.Y. 291, 333?

"Every one may renounce or relinquish a right introduced for his own benefit."

493. For the record, did the purported Court mistake when it held in Carson v. Western R. Co., 8 Gray (Mass.) 424?

"He who uses his legal rights harms no one."

494. For the record, factually what is the history of the law in the United States?

495. For the record, factually how did law evolve in the united States of America?

496. Factually how did law evolve in the State of Texas?

497. Factually how did law evolve in the STATE OF TEXAS?

498. For the record, did the Great Seal of Texas transform from "The State of Texas" to THE STATE OF TEXAS?

499. For the record, is the August 27, 1945 Texas Constitution, Article IV, § 19 stated correctly as follows?

"There shall be a Seal of the State, which shall be kept by the Secretary of State, and used by him officially under the direction of the governor. The Seal of the State shall be a star of 5 points, encircled by olive and live oak branches, and the words, 'The State of Texas'."

500. For the record, since the Seal of the State is "The State of Texas", how is it possible to bring a criminal action as "THE STATE OF TEXAS"?

501. For the record, who owns the entity known as THE STATE OF TEXAS?

502. For the record, does the State of Texas appear on documents issued from the Secretary of State's office?

503. For the record, what is the difference between Public Law and Private Law?

504. For the record, did the Founding Fathers of the united States of America believe that the Laws of G-d are self-evident and that All mankind enjoy "certain unalienable rights" making US self-directing, sovereign and free to do as one pleases, as long as one does not harm another, or his or her property?

505. Did the alleged court error in Butchers' Union Co. v. Crescent City Co., 111 U.S. 746 (1883)?

"Among these unalienable rights, as proclaimed in the Declaration of Independence is the right of men to pursue their happiness, by which is meant, the right any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give them their highest enjoyment... It has been well said that, the property which every man has is his own labor, as it is the original foundation of all other property so it is the most sacred and inviolable..."

506. For the record, since WE the People are sovereign, would any attempt to exercise any powers NOT conveyed by the People to the government be unjust and unconstitutional?

507. For the record, since any and all power derived by the government is given or delegated by WE the People, is it possible for the government to do anything, or something that the We the People do not have the power to give or do?

508. For the record, since All government power is derived from WE the People, why do the legislators, bureaucrats or judges pretend or believe THEY can make and enforce any law (s) THEY choose?

509. For the record did the alleged Court fail when it held in N.J. Steam Co. v. Merch Bank, 6 How. (47 U.S.) 344 407?

"Power can never be delegated which the authority said to delegate never possessed itself."

510. For the record, did the alleged Court error when it held in Poe v. Seaborn, 282 U.S. 101, 113?

"Power is not synonymous with right."

511. For the record, did the alleged Court error when it held in Town of Pawles v. Clark, 9 Cranch (13 U.S.) 292, 333?

"WE take it to be a clear principle that the common law in force at the emigration of our ancestors is deemed the birthright of the colonies, unless so far as it is inapplicable to their situation, or repugnant to their other rights and privileges."

512. For the record, Are WE All treated equally, fairly under the law, or is the law arbitrary and capricious?

513. For the record, factually is the American Legal system the best money can buy?

514. For the record, what is the meaning and definition of "good money"?

515. For the record, factually what is the meaning and definition of "cash"?

516. For the record, factually what is the meaning and definition of "currency"?

517. For the record, factually what is the meaning and definition of "national currency"?

518. For the record, factually were YOU born or are YOU a creation of government?

519. For the record, factually can YOU describe the birth experience?

520. For the record, factually is traveling through a tunnel toward the light a description of the birth experience?

521. For the record, factually what is the meaning and definition of a "certificate"?

522. For the record, do YOU possess a "Birth Certificate"?

523. For the record, factually what is the purpose of a "Birth Certificate"?

524. For the record, can YOU prove YOUR existence, if YOU do not possess a "Birth Certificate"?

525. For the record, factually how do YOU know if YOU were born?

526. For the record, factually does the location where YOU were born confer any rights?

527. Factually do YOUR rights come from G-d almighty, a piece of paper (Birth Certificate), or from a location?

528. Factually if YOU do not know YOUR rights, how can YOU protect or how would YOU know if YOU lost YOUR rights?

529. For the record, can YOU lose something YOU do not have, know or possess?

530. Factually is one of governments' primary, essential fundamental duties and functions to protect (Y)OUR rights?

531. For the record, since I AM on the land and or sea of Texas, why should I not look to the founding document of Texas in 1836 – the Declaration of Rights, of the Republic of Texas Constitution to ascertain my rights?

532. Factually did YOUR mother or father ever lie or mislead YOU?

533. For the record, are ex parte or secret hearings, meetings permitted near or in the MUNICIPAL COURT OF DALLAS?

534. Factually did a public servant or government official ever lie to or mislead YOU?

535. Factually was YOUR mother or father ever misled or lied to, by alleged government officials?

536. Factually when YOU discover alleged government officials, better known as public servants are lying and misrepresenting facts for their own profit and gain what recourse or remedy is available in law?

537. For the record, without a "Birth Certificate" can one acquire a SOCIAL SECURITY NUMBER (SSN)?

538. Factually what is the significance and or the importance of a SSN?

539. Factually is there a law that requires anyone or everyone to have a SSN?

540. Factually was the SOCIAL SECURITY SYSTEM (SSS) created to assist in retirement or to enslave the free by accepting a benefit?

541. Factually is it fair and proper to state that All (wo) men are responsible for debts that THEY create?

542. Factually is it fair and proper to state if someone has a SSN is (s) he responsible to pay the U.S. National debt?

543. Factually is it fair and proper to state if someone has a SSN is (s) he responsible for debts that (s) he didn't create?

544. For the record, factually do other countries have SSS?

545. For the record, factually why do countries have SSS?

546. For the record, factually how many countries have SSS?

547. For the record, factually is the UNITED NATIONS involved in the SSS?

548. For the record, does the International Monetary Fund (IMF) profit from the use of the Federal Reserve Notes rather than the lawful money of the United States?

549. For the record, since the united States of America was founded on the beliefs of freedom of speech, freedom of religion and NO debtors' prison (debtors' prison is a debt based monetary system contrary to G-d's lawful wealth based monetary system), does it seem natural that the founding fathers being sovereign, chose to distance themselves from the Bank of England and its debt based monetary system?

550. For the record, does the following quote in "The Federal Reserve System – Purpose & Functions", 8th Edition, Dec. 1994, Library of Congress Card No. 39 – 26719 on p. 1 prove that the Federal Reserve Bank is based on the same debt based monetary system of the Bank of England?

"Most developed countries have a central bank whose functions are broadly similar to those of the Federal Reserve. The Bank of England has existed since the end of the 17th century, Napoleon I established the Banque of France in 1800, and the Bank of Canada began its operation in 1935. The German Central bank was reestablished after WW II, and is loosely modeled on the Federal Reserve."

551. Does the following statement in "The Federal Reserve System – Purpose & Functions", 8th Edition, Dec. 1994, page 3, prove fraud, sedition and treason by leaders of the U.S. Government and its' subsidiaries, in 1913, and today since NO public servant will dismantle the Federal Reserve System?

"The Federal Reserve System is considered to be an independent central bank. It is so, however, only in the

sense that its decisions do not have to be ratified by the President or anyone else in the executive branch of government. The entire System is subject to oversight by the U.S. Congress because the Constitution gives to Congress the power to coin money and set its value – a power that, in the 1913 act, Congress delegated to the Federal Reserve. The Federal Reserve must work within the framework of the overall objectives of economic and financial policy established by the government, and this the description of the System as "independent within the government" is more accurate."

552. For the record, are Federal Reserve Notes (FRNs) coined or printed?

553. For the record, what gives a FRN value, when it is NOT backed by anything?

554. For the record, is it a lawful transaction, since Federal Reserve Notes are no longer backed by gold or silver, for a member bank to may make a loan, when what is being loaned is someone's own credit and a bookkeeping entry is made to record the transaction?

555. For the record, factually what is the meaning and definition of "storer of wealth"?

556. For the record, does the above stated transaction prove collusion, sedition and treason practiced by the bankers (banksters) and sanctioned by the attorneys at law?

557. For the record, factually what is the meaning and definition of "conspiracy"?

558. For the record, factually what is the meaning and definition of "collusion"?

559. For the record, factually what is the meaning and definition of "sedition"?

560. For the record, factually how many people must be involved to prove a conspiracy exists?

561. For the record, factually are Federal Reserve Notes nonsense?

562. For the record, factually what is the meaning and definition of "nonsense"?

563. For the record, factually what is the meaning and definition of "lawful money"?

564. For the record, factually what are the characteristics of money?

565. For the record, factually what is the meaning and definition of the "characteristics of money"?

566. For the record, factually is money a storer of wealth?

567. For the record, factually did YOUR mother and or father give YOU YOUR name?

568. For the record, factually what is the meaning and definition of your "true name"?

569. For the record, factually do YOU have a family name, a family tree, a family crest and or emblem?

570. For the record, factually is the first, middle and last name a scheme, whereby so-called government can control and manipulate WE the People?

571. For the record, factually is a lawful government the publics' business?

572. For the record, factually is the hypothetical government, the STATE OF TEXAS, THE CITY OF DALLAS, THE COUNTY OF DALLAS, and the UNITED STATES corporation(s)?

573. For the record, factually since a corporation, cannot think or act for itself, MUST corporations be represented, controlled, and guided?

574. For the record, factually what is the purpose and function of a corporate government?

575. For the record, did Milton Friedman truthfully describe a corporation when he said the following? "A corporation cannot be ethical; its only responsibility is to turn a profit"?

576. For the record, would YOU or anyone YOU know pay to have someone to beat YOU up?

577. For the record, when uneducated, ignorant, unregistered, foreign paid AGENTS or ACTORS a.k.a. the DALLAS POLICE et .al. regularly issue, and distribute citations (awards), after THEY hunt, track, pursue, stalk, stop,

assault, victimize, terrorize, vandalize WE the People are these the lawful actions of PEACEKEEPERS, (wo)men that affirmed by Oath to uphold the laws of the State of Texas and the United States or the actions of thieves, masquerading and participating in an extortion racquet, that beat and routinely steal from US All?

578. For the record, factually are Oaths of office presented by the CITY OF DALLAS signed under penalty and perjury?

579. For the record, factually what is the meaning and definition of a "de jure government"?

580. For the record, factually what is the meaning and definition of a "defacto government"?

581. For the record, factually are some defacto governments dishonest, corrupt, sinister, bribable, oppressive, tyrannical, and unlawful?

582. For the record, factually is the STATE OF TEXAS a defacto or de jure government?

583. For the record, factually is the State of Texas a defacto or de jure government?

584. For the record, factually is the UNITED STATES a defacto or de jure government?

585. For the record, factually is the United States a defacto or de jure government?

586. For the record, factually is the United States of America a defacto or de jure government?

587. For the record, factually is the united States of America a defacto or de jure government?

588. For the record, factually when governments are no longer responsive to the needs of WE the People, is it the Peoples' responsibility to alter, and reform the government?

589. For the record, factually are the Constitution(s) contract(s), between WE the People and the alleged government, which hires public servants, who MUST conform their actions and deeds to the laws as prescribed by the Constitution?

590. For the record, factually are YOU familiar with the following; "When in the Course of human events, it becomes necessary for one people to dissolve the political bands, which have connected them.... We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, & the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever, any form of Govt. becomes destructive of these ends, it is the Right of the People to alter or to abolish it...it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security."?

591. For the record, factually is it possible for YOU or a government to fall from G-d's grace or favor?

592. For the record, is it true the Bible is the Law and "Word of G-d" pursuant to Federal Public Law 97-280, and 96 Stat. 1211?

593. For the record, factually were YOU aware that according to the Law and Word of G-d, I suffered an Exodus 21:16 "Manstealing Event" at the hands of the DPD, which is punishable by death?

594. For the record, factually is it possible for ME, to do anything but share the truth, follow the law when I am instructed by Exodus 23:2?

"Do not follow the crowd in doing wrong. When you give testimony in a lawsuit, do not pervert justice by siding with the crowd."

595. For the record, factually do YOU believe in justice for All?

596. For the record, factually how can justice for All be accomplished when attorneys, bankers and doctors have an unfair advantage?

597. For the record, factually are YOU familiar with Deuteronomy 32:43?

"Praise his People, O Nations: For he will avenge the blood of his servants. He will render vengeance against his adversaries and make expiation for his land and his People."

598. For the record, factually are YOU aware that the doctrine of "command responsibility," the product of an American initiative enshrined in law, since the Nuremberg Statutes after WW II, affirms that civilian and military leaders may be held legally accountable for abuses committed by their subordinates - even when these commanders did not personally order abuses, witness such abuses, have direct knowledge about them or conspire to commit them?

599. For the record, factually what is the meaning and definition of "command responsibility"?

600. For the record, factually what is the meaning and definition of "kidnapping"?

601. For the record, factually what is the meaning and definition of "aggravated kidnapping"?

602. For the record, factually what is the meaning and definition of "restrain"?

603. For the record, factually what is the meaning and definition of "assault"?

604. For the record, factually what is the meaning and definition of "aggravated assault"?

605. For the record, factually what is the meaning and definition of "forgery"?

606. For the record, factually does the 6th Edition of Black's Law Dictionary describe "false arrest" as follows?

"A species of false imprisonment, consisting of the detention of a person without his or her consent and without authority." Reams v. City of Tucson, App. 145 Ariz. 340, 701 P2d 598, 601.

"Such arrest consists in unlawful restraint of an individual's personal liberty and locomotion. "

Johnson v. Jackson, 43 Ill.App.2d 251, 193 N.E. 2d 485, 489.

"An arrest without proper legal authority is a false arrest and because an arrest restrains the liberty of a person it is also false imprisonment. The gist of the tort is protection of the personal interest in freedom from restraint of movement. Neither ill will nor malice are elements of the tort, but if these elements are shown, punitive damages may be awarded in addition to compensatory or nominal damages.

607. For the record, factually what is the meaning and definition of "malfeasance"?

608. For the record, factually what is the meaning and definition of "malice"?

609. For the record, factually what is the meaning and definition of "malicious prosecution"?

610. For the record, factually what is the meaning and definition of "malicious trespass"?

611. For the record, factually what is the meaning and definition of "malicious injury"?

612. For the record, factually what is the meaning and definition of "grievous injury of people in police custody"?

613. For the record, factually "In addition to addressing the law, is now a good time to address the culture of impunity enjoyed by some of the country's security forces"?

614. For the record, factually is the purpose of the government to provide protection for its' citizens and in return, the people are loyal and support the government by paying taxes (homage)?

615. For the record, factually what is the meaning and definition of a "body politic"?

616. For the record, factually what is the meaning and definition of "nationality"?

617. For the record, factually what is the meaning and definition of "citizenship"?

618. For the record, factually what are the different classifications of citizenship?

619. For the record, factually what is the difference between citizenship and nationality?

620. For the record, factually is it reasonable to describe citizenship as a matter of unilateral, discretionary, non-justifiable, political choice?

621. For the record, factually does one's citizenship identifies one's voluntary association with a given governmental

entity, plan or system?

622. For the record, factually does organized crime, and or gangs provide protection and expect loyalty from their members?

623. For the record, factually what is the meaning and definition of "extortion"?

624. For the record, factually do gangs have their own coded language, insignias, display decals or writings, and come to the aid of other gang members with guns, knives, clubs or other instruments of destruction?

625. For the record, factually is the transcript of the radio transmission and the video from the event when the DALLAS POLICE DEPT. (DPD) maliciously attacked and then intentionally shot ME, at point blank range, which caused ME injury, stress, trauma, property damage, as well as, the consternation and alienation of my friends, and my family?

626. For the record, factually were the intentional actions of AGENT, ACTOR et. al. clear, threatening, purposeful, forceful, malicious and intended to coerce information?

627. For the record, factually what is the meaning and definition of "point blank range"?

628. For the record, factually what is the meaning and definition of "intentional"?

629. For the record, factually what is the meaning and definition of "attacked"?

630. For the record, factually what is the meaning and definition of "threatening"?

631. For the record, factually what is the meaning and definition of "threat"?

632. For the record, factually what is the meaning and definition of "purposeful"?

633. For the record, factually what is the meaning and definition of "forceful"?

634. For the record, factually what is the meaning and definition of "malicious"?

635. For the record, factually what is the meaning and definition of "coerce"?

636. For the record, did the alleged Court hold correctly in Brooklyn Ins. Co. v. Dutcher. 5 Otto (95 U.S.) 269. 273? "There is no surer way to find out what parties meant, than to see what they have done."

637. For the record, factually are AGENT, ACTOR GUENTHER'S actions compatible with WE the People's belief or myth that POLICE serve and protect?

638. For the record, which items were utilized during the intentional, vicious, malicious, attack, which according to the TEXAS PENAL CODE (TPC) are OFFENSES AGAINST PUBLIC HEALTH, SAFETY, and MORALS?

CHAPTER 46. WEAPONS

(1) "Club" means an instrument that is specially designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument, and includes but is not limited to the following:

(A) blackjack;

(B) nightstick;

(C) mace; or

(D) tomahawk?

(2) "Explosive weapon" means any explosive or incendiary bomb, grenade, rocket, or mine, that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, or for the principal purpose of causing such a loud report as to cause undue public alarm or terror, and includes a device designed, made, or adapted for delivery or shooting an explosive weapon?

(3) "Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use....

(16) "Zip gun" means a device or combination of devices that was not originally a firearm and is adapted to expel a projectile through a smooth-bore or rifled-bore barrel by using the energy generated by an explosion or burning substance.

639. For the record, factually is pepper spray considered a pyrophoric, meaning it burns on contact with air?

640. For the record, factually why do I "suffer extreme interrogation techniques" as per the "War on Terror"?

"Recently Pres. George W Bush was advised by Justice Dept. officials and the White House lawyer, Alberto Gonzalez, that Geneva Conventions on torture did not apply to "unlawful combatants", captured during the war on terror."

"Govt. officials approved the use of dogs, temperature extremes, reversed sleep patterns and sensory deprivation for prisoners whenever sr. officials at the Abu Ghraib jail wished.

Legal and constitutional experts have expressed astonishment at the judgments made by administration lawyers on interrogation techniques.

In 1 memo, written in Jan. 2002, Mr. Gonzalez told Pres. Bush that the nature of the war on terror "renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions".

641. For the record, factually does the State of Texas consider ME, Jeffrey Stuart, Katz an "unlawful combative"?

642. For the record, factually what evidence supports the State of Texas' claim that I am an "unlawful combative"?

643. For the record, were YOU aware that upon entering LEW STERRETT DETENTION CENTER I stood in front of a fan, due to the extreme burning sensation on my skin, and the pedestal fan dispersed the pepper spray throughout the room and many of the AGENT, ACTORS is attendance coughed and their eyes teared?

644. For the record, factually what crime was AGENT, ACTOR GUENTHER et. al. investigating when I, ME was held against my will, severely battered and interrogated?

645. For the record, factually was the crime AGENT, ACTOR GUENTHER investigated involve any special danger to the public at large?

646. For the record, factually was AGENT, ACTOR GUENTHER in imminent and unavoidable danger of death or grave bodily harm?

647. For the record, factually did a "Disparity of Force" exist when the DALLAS POLICE DEPT. (DPD) maliciously, viscously attacked ME, while I was defenseless and sitting peacefully, passively behind the steering wheel?

648. For the record, factually what is the meaning and definition of "disparity of force"?

649. For the record, factually did AGENT, ACTOR GUENTHER, et. al. have their "back to the wall" or have no other options available?

650. For the record, factually did Jeffrey Stuart, Katz offer a document titled "NOTICE to All PUBLIC SERVANTS, ACTORS & or AGENTS" to AGENT, ACTOR GUENTHER, et. al. to review and talk it out?

651. For the record, factually what is the significance of the term to "talk it out"?

652. For the record, factually why didn't AGENT, ACTOR GUENTHER determine it was better to compromise and talk it out, rather than escalate the conflict to include physical violence and property damage?

653. For the record, factually were the actions of the AGENT, ACTOR GUENTHER, et.al. prudent, careful, polite and respectful or aggressive, careless, argumentative, and disrespectful?

654. For the record, were YOU aware that I met and discussed the "NOTICE to All PUBLIC SERVANTS, ACTORS & or AGENTS" with CITY OF CARROLTON, ASST. CHIEF MONTY STANLEY?

655. For the record, Were YOU aware that I met and discussed the "NOTICE to All PUBLIC SERVANTS, ACTORS &

or AGENTS" with CITY OF UNIVERSITY PARK, LT. KEITH BURKE?

656. For the record, factually did AGENT, ACTOR DOLL threaten to charge ME, Jeffrey Stuart, Katz with littering?

657. For the record, factually did an unknown AGENT, ACTOR while trespassing, find my Republic of Texas flag and laughingly say, "Look what I found" and then purposefully with malicious intent break the staff of the flag?

658. For the record, factually did AGENT, ACTOR GUENTHER, et. al. demonstrate "deliberate indifference" when presented with my document regarding my constitutional right to travel?

659. For the record, factually what was AGENT, ACTOR GUENTHERS' reaction to this offer of compromise?

660. For the record, factually what is the meaning and definition of "compromise"?

661. For the record, factually did the presentation of the document present an undue burden on AGENT, ACTOR GUENTHER, et. al.?

662. For the record, factually what is the meaning and definition of "undue burden"?

663. For the record, factually what is the meaning and definition of "wrongful behavior"?

664. For the record, factually did AGENT, ACTOR GUENTHER, et. al. demonstrate "wrongful behavior" by not engaging Jeffrey Stuart, Katz?

665. For the record, factually did the fictional, STATE OF TEXAS, et. al. demonstrate wrongful behavior when it promoted and profited from the myth, the scheme to induce all (wo)men to (pro)secure a TEXAS DRIVER LICENSE?

666. For the record, factually were the words of John F. Kennedy insightful?

"The great enemy of the truth is very often not the lie - deliberate, contrived and dishonest, but the myth – persistent, persuasive and unrealistic."

667. For the record, factually does the existence of a right to liberty places a burden on the government to justify any regulations of liberty as necessary and proper?

668. For the record, factually did the alleged Court hold correctly in Reynolds v. Blaisdell, 49A, 42, 43, 23 R.I. 16?

"There must be sufficient positive facts proved to take a matter out of the realm of conjecture and presumption to that of certainty."

669. For the record, factually since AGENT, ACTOR GUENTHER, et. al. (are) is paid and educated in the law, therefore should AGENT, ACTOR GUENTHER, et. al. know or should have known that there are three (3) Classifications of Misdemeanors?

Texas Penal Code §12.03. Classification of Misdemeanor

(a) Misdemeanors are classified according to the relative seriousness of the offense in 3 categories;

(1) Class A misdemeanor.

(2) Class B misdemeanor.

(3) Class C misdemeanor.

(b) An offense designated as a misdemeanor in this code without specification as to punishment or category is a Class C misdemeanor.

(c) Conviction of a Class C misdemeanor does not impose any legal disability or disadvantage.

670. For the record, factually what is the meaning and definition of "does not impose any legal disability or disadvantage"?

671. For the record, factually is AGENT, ACTOR GUENTHER, et. al. defacto or dejure?

A 'dejure officer' has fulfilled the requirements of office, where he has sent in his Statement of Officer to the

Secretary of State as required in Article 16, § 1 of the Texas Constitution and he has accomplished all training required by law to safeguard the rights of the people. The 'defacto officer' is someone that hires in a police department or is deputized by some dejure officer, that has fulfilled his requirements to hold office.

This defacto officer has been given the authority to deal with the public or third parties in certain situations.

672. For the record, factually did the alleged Courts fail in their holdings in Walberg v. State, 73 Wis.2d 448, 463-64, 243 N.W.2d 190, 198 (1976); Lincoln St., Inc. v. Town of Springfield, 615 A.2d 1028, 1031 (Vt. 1992) and Uhrig v. Regan, 623 F.Supp. 968, 971 (D. Md. 1985))?

"A defacto officer could do things like crowd control or guard a building. But, when you are in your car, you are now separated from the public and you could not be a third party, when you are charged with doing the act itself."

673. For the record, factually since AGENT, ACTOR GUENTHER, et. al. are paid and educated in the law, should AGENT, ACTOR GUENTHER, et. al. know or should have known that it is, unlawful to kidnap, and hold ME against my will, since it is plain and clear that Class "C" misdemeanors are non-jailable offenses?

Texas Penal Code §12.23. Class "C" Misdemeanors

An individual adjudged guilty of a Class "C" misdemeanor shall be punished by fine only, not to exceed $500.

674. For the record, factually does AGENT, ACTOR GUENTHER, et. al. have the ability and knowledge to make a legal determination?

675. For the record, factually what does AGENT, ACTOR GUENTHER'S, et. al. legal training consist of?

676. For the record, factually is (are) AGENT, ACTOR GUENTHR, et. al. required to attend classes to handle the duty and responsibility of public service?

677. For the record, factually where are these classes held?

678. For the record, factually what does the education consist of?

679. For the record, factually how many hours is (are) AGENT, ACTOR GUENTHER et. al. taught regarding a citizen's right to travel freely without government interference?

680. For the record, factually what does AGENT, ACTOR GUENTHER'S, et. al. personnel profiles indicate?

681. For the record, factually are there any complaints against AGENT, ACTOR GUENTHER et. al. who participated my kidnapping and assault?

682. For the record, factually has AGENT, ACTOR GUENTHER, et. al demonstrated any dangerous or violent tendencies?

683. For the record, factually is (are) AGENT, ACTOR GUENTHER, et. al. in a high stress job?

684. For the record, factually what makes the job high stress?

685. For the record, factually what test(s) are available to qualify AGENT, ACTOR GUENTHER et. al. for the demands and stress of the job?

686. For the record, factually how often are the DPD AGENTS, ACTORS tested or evaluated on their job performance?

687. For the record, factually is (are) AGENT, ACTOR GUENTHER, et.al. stable, worthwhile citizen(s) of the republic?

688. For the record, factually has AGENT, ACTOR GUENTHER, et. al. ever been charged or convicted of a felony?

689. For the record, did the purported Court hold correctly in American Ins. Co. v. Griswold, 14 Wend. (N.Y.) 399, 492?

"No one is considered to act with guile, or to be a wrong-doer, who uses his own right."

690. For the record, factually what is the meaning and definition of "wrong-doer"?

691. For the record, factually what is the meaning and definition of "wrong"?

692. For the record, factually what is the meaning and definition of "a man's home is his castle"?

693. For the record, factually what is the historical significance of "a man's home is his castle"?

694. For the record, factually is a dwelling merely an extension of a man?

695. For the record, factually does the "Pledge of Allegiance" state "... and to the republic for which it stands..."?

696. For the record, factually does the Constitution guarantee ME, a republican form of government?

697. For the record, factually are the actions of the STATE OF TEXAS consistent with the intent of Art. 1 § 2?

Texas Constitution Art. 1 § 2. INHERENT POLITICAL POWER; REPUBLICAN FORM OF GOVERNMENT.

"All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, &, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient."

698. For the record, factually are the actions of alleged Court consistent with Art. 1 § 11 of the Texas Constitution when I was denied bail?

Texas Constitution Art. 1 § 11. BAIL.

"All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law."

699. For the record, factually are the actions of the jailers at the LEW STERRETT DENTENTION CENTER consistent with the intent of Art. 1 § 12 of the Texas Constitution when I was denied pen, pencil and paper, so I could write a Habeas Corpus?

Texas Constitution Art. 1 § 12 HABEAS CORPUS.

"The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy & effectual."

700. For the record, factually what is the intent of Art. 1 § 14 of the Texas Constitution?

Texas Constitution Art. 1 § 14. DOUBLE JEOPARDY.

"No person, for the same offense, shall be twice put in jeopardy of life or liberty, nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction."

701. For the record, factually is the United States of America or any of its' alias, delivering on its' guarantee of a republican form of government?

702. For the record, factually were the actions demonstrated by the DALLAS POLICE DEPT. consistent with Thomas Jefferson's statement?

"The true foundation of republican government is the equal right of every citizen in his person and property and in their management."

703. For the record, factually what is the difference between a republic and a democracy?

704. For the record, factually how do these differences (a)effect the citizens?

705. For the record, factually what is the meaning and definition of a "republican government"?

706. For the record, factually what is the meaning and definition of a "republic"?

707. For the record, factually what is the meaning and definition of a "democracy"?

708. For the record, factually what is the meaning and definition of "socialism"?

709. For the record, factually what is the meaning and definition of "communism"?

710. For the record, factually what is the meaning and definition of "oligarchy"?

711. For the record, factually what is the meaning and definition of "a totalitarian state"?

712. For the record, factually what is the difference between democracy and socialism?

713. For the record, factually if AGENT, ACTOR GUENTHER et. al. is (are) not properly trained in the law, what is AGENT, ACTOR GUENTHER, et. al. doing on the public right of way enforcing the law he does not know or understand?

714. For the record, factually why is AGENT, ACTOR GUENTHER, et. al. not properly trained in the law?

715. For the record, factually what is AGENT, ACTOR GUENTHER'S full time job?

716. For the record, factually what is AGENT, ACTOR GUENTHER'S job description as stated on official records from the DPD?

717. For the record, factually was there any property damage or anyone hurt, the night of the alleged violations, by ME, Jeffrey Stuart, Katz?

718. For the record, factually how did I, Jeffrey Stuart, Katz, harm or disturb the peace, as I traveled quietly along the right of way in a private conveyance late on the evening of April 22, 2004 c.e.?

719. For the record, did the alleged Court fail in Owens v. Missionary Society, 14 N.Y. 380, 393, 67 Am. Dec. 160; and Bloss v. Toby, 2 Pick. (Mass.) 327?
"The time is to be considered."

720. For the record, factually did Bouvier's Law Dictionary, 1914 ed., p. 3309 and the purported Court error when it held in Locket v. State, 47Ala. 45?
"Traveler - One who passes from place to place, whether for pleasure, instruction, business or health."

721. For the record, factually can AGENT, ACTOR GUENTHER, et. al. contradict the following statement, "All actions of or by Jeffrey Stuart, Katz, a traveler, at the initial stop and the subsequent kidnapping were peaceable and at no time did Jeffrey Stuart, Katz become disorderly or disrespectful"?

722. For the record, factually does AGENT, ACTOR GUENTHER or other CITY of DALLAS employees have the right to damage someone's property?

723. For the record, factually did the purported Court correctly hold in Troy v. Yelle, 176 P.2d 459, 463?
"Acts indicate intention."

724. For the record, factually what condition(s) or circumstance(s) MUST exist, which allow AGENT, ACTOR GUETHER, et. al. to break, enter, trespass, assault, damage, and rummage through my private property, without my expressed permission, when NO one was hurt, there was NO property damage, and the principal was imagined by delusional, defective AGENT(S) or ACTOR(S) that can no longer be relied upon or trusted?

725. For the record, factually pursuant to TCCrP Art. 18.01 can YOU provide the "search warrant" that AGENT, ACTOR GUENTHER, et. al. relied upon to break, enter, and forage through my zippered-closed wallet and private conveyance?

726. For the record, factually by what authority did AGENT, ACTOR GUENTHER, et. al. have to invade my privacy and to trespass on my property, by examining the contents of my private conveyance and my zippered-closed wallet without my consent or permission?
See Texas Penal Code §. 30.05. Criminal Trespass.

727. For the record, factually if AGENT, ACTOR GUENTHER had authority, what law or codes did AGENT, ACTOR GUENTHER rely upon?

728. For the record, factually does AGENT, ACTOR GUENTHER have the right to demand answers to questions wher there was no crime?

729. For the record, factually did the alleged Court error when it held in McCracken v. Hare, 2 Spears (S.C.) 256? "Gross negligence is equivalent to fraud."

730. For the record, factually did the purported Court rule correctly in Alexander v. Church, 53Conn. 561? "Fraud is always positive or intentional and distinguished from negligence."

731. For the record, did the alleged Court error when it held in Harvey v. Waitt, 44 N.E.2d 629, 633, 312 Mass. 333? "Nothing can be treated as evidence which is not introduced as such."

732. For the record, factually did the purported Court error when it held in Tift v. Jones, 77 Gs. 181; 3 S.E. 399? "Proof is the effect of evidence; the establishment of a fact by evidence."

733. For the record, factually did the so-called Court hold correctly in Porter v. Stevens, 9 Cush. (Mass) 535? "He who affirms must prove."

734. For the record, factually did the purported Court correctly hold in Dranguet v. Prudhomme, 3 La. 83? "The burden of proof lies on him who asserts the fact, not on him who denies it; as from the nature of things, he who denies a fact cannot produce any proof."

735. For the record, did the purported Court error when it held in Bank of U.S. v. Dandridge, 12 Wheat, 64, 69-70? "All things being presumed to be lawfully done and dully performed until the contrary is proved."

736. For the record, factually did the supposed Court error when it held in Louisville & N. R.R. v. U.S., 740, 759? "Failure to enforce the law does not change it."

737. For the record, factually did the alleged Court hold correctly in Pearson v. Lord, 6 Mass. 81, 84? "The expression of one thing is the exclusion of another."

738. For the record, factually what is the meaning and definition of "my legal status"?

739. For the record, factually what is the meaning and definition of "my political status"?

740. For the record, factually did the alleged Court correctly hold in Barney v. Tourtellotte, 138 Mass. 108? "The status of a person is his legal position or condition."

741. For the record, factually did the purported Court hold correctly in Kidder v. Stevens, 60 Cal. 414, 419? "A status once established, is presumed by the law to remain until the contrary appears or is expressed."

742. For the record, factually did the alleged Court fail when it held in City of Dallas v Mitchell, 245 S.W. 944? "The rights of the individuals are restricted only to the extent that they have been voluntarily surrendered by the citizenship to the agencies of government."

743. For the record, factually by what means did AGENT, ACTOR GUENTHER determine my legal or political status?

744. For the record, does AGENT, ACTOR GUENTHER have the right to determine my legal or political status?

745. For the record, who gave AGENT, ACTOR GUENTHER the right to determine my legal or political status?

746. For the record, factually does AGENT, ACTOR GUENTHER have the ability to determine my legal or political status?

747. For the record, factually is AGENT, ACTOR GUENTHER, et. al. qualified, paid, and educated to make this legal determination?

748. For the record, factually what are AGENT, ACTOR GUENTHER'S, et. al. qualifications to make legal determination?

749. For the record, factually how is AGENT, ACTOR GUENTHER et. al. trained and educated to make this legal

determination?

750. For the record, factually can AGENT, ACTOR GUENTHER et. al. claim ignorance of the law as an excuse when AGENT, ACTOR GUENTHER is paid, and educated to know and enforce the law?

751. For the record, factually did the purported Court incorrectly hold in Rankin v. Mortimere, 7 Watts (Penn.) 374? "Ignorance of the law excuses no one (for all are bound to know the law).

752. For the record, factually do 1000s of automobiles, or private conveyances travel without a front license plates throughout Texas?

753. For the record, factually is not having a front license plate suspicious when 100s of 1000s do not have a license plates on the front of their automobiles, or private conveyance?

754. For the record, factually provide the law that requires a private conveyance, automobile to have a STATE OF TEXAS License Plate?

755. For the record, factually did the CITY OF DALLAS profit from the "taking" of my private property?

756. For the record, factually how does the CITY OF DALLAS profit from "taking" my private property?

757. For the record, factually what is the meaning and definition of "taking clause" as it relates to property?

758. For the record, did the alleged Court fail in Zackery C. Brown v. STATE OF TEXAS 443 U.S. 47(1979)? "Conviction under Texas law for defendants refusal to identify self after being stopped by police, held improper because officer's stop without reasonable suspicion of criminal activity violated Fourth Amendment."

759. For the record, factually does the DPD enforce a quota or suggest to it's AGENT(S), ACTOR(S) to write or issue a specific number of citations or traffic tickets?

760. For the record, factually does writing citations or traffic tickets increase the cash flow of the alleged PLAINTIFF(S)?

761. For the record, factually does AGENT, ACTOR GUENTHER have the right or duty to detain ME, Jeffrey Stuart, Katz to extort information?

762. For the record, factually does AGENT, ACTOR GUENTHER have the right or duty to detain ME, Jeffrey Stuart, Katz to extort unlawful funds against my will?

763. For the record, factually are the comments of Thomas Jefferson sobering and insightful? "Single acts of tyranny may be ascribed to the accidental opinion of a day; but a series of oppressions, begun at a distinguished period, and pursued unalterably through every change on ministers (administrations), too plainly proves a deliberate systematic plan of reducing US to slavery".

764. For the record, factually was Dr. Kevin Bales, President of Free the Slaves http://www.freetheslaves.net astute, when he observed the following quote from the Slavery Convention of the League of Nations, (1926)? "Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised"?

765. For the record, was Dr. Kevin Bales Pres. of Free the Slaves, accurate when he wrote in "Disposable People", "Bondage can be compared to living in a prison or a mental institution.... Those who get out have to learn about living in the 'real world'"?

766. For the record, factually what is the meaning and definition of the "real world"?

767. For the record, factually for those who escape servitude, is the road to freedom certain? A United Nations fact sheet on contemporary slavery insinuates it may be easier to free the body than the mind: "Even when abolished, slavery leaves traces. It can persist as a state of mind - among its victims and their

descendants, and among the inheritors of those who practiced it - long after it has formally disappeared."

768. For the record, factually do YOU think as I do that Thomas Jefferson is correct, when he expressed the following? "I have sworn upon the altar of G-d, eternal hostility against every form of tyranny over the mind of man".

769. For the record, factually what is the meaning and definition of "robbery"?

770. For the record, factually what is the meaning and definition of "theft"?

771. For the record, factually what is the meaning and definition of "a shake down"?

772. For the record, did the alleged Court fail in American Communications Assoc. v. Douds, 339 U.S. 382,442? "It is not the function of our government to keep the citizen from falling into error; it is the function of the citizen to keep the government from falling into error".

773. For the record, factually did the purported Court mistake in Wasilowski v. Park Bridge Corp., 156 F.2d 612, 614? "An AGENT is a person authorized by another to act on his account."

774. For the record, factually did the alleged Court hold correctly in Comm. v. Dewitt, 10 Mass. 155? "He who does a thing by another is considered as doing it himself" [acts of an agent are the acts of the principle.]

775. For the record, factually do YOU concur and concede that the CITY OF DALLAS, the COUNTY OF DALLAS and the STATE OF TEXAS are responsible for AGENT, ACTOR GUENTHERS, et. al. actions and deeds?

776. For the record, factually are All DALLAS POLICE OFFICERS, AGENTS or ACTORS et. al. required to affirm an "Oath of Office" to support the laws of the State of Texas, as well as, the United States of America?

777. For the record, factually are All DALLAS POLICE, AGENTS and or ACTORS, et. al. required to file a "Statement of Office" with the Secretary of the State of Texas?

778. For the record, factually how often are public servants required to affirm or swear an Oath to uphold the laws of Texas?

779. For the record, factually if a Notary who notarizes or witnesses an Oath of Office commission expires, is the Oath of Office valid and lawful or is it invalid, and unlawful, since the Notary commission is no longer valid?

780. For the record, factually how is possible for an Oath of Office or Statement of Office to be valid and lawful, if the commission of the Notary is no longer valid, since the Notary MUST have a valid commission to witness and authenticate documents?

781. For the record, factually how did the CITY OF DALLAS rank in the 2004 FBI report when compared to other cities in controlling crime?

782. For the record, factually are YOU satisfied with the crime prevention effort made by the CITY OF DALLAS?

783. For the record, factually is crime protection one of the essential functions of government and its' failure may be catastrophic and kill YOU?

784. For the record, factually would crime rates decrease if AGENTS, ACTORS patrolled neighborhoods and the business districts routinely?

785. For the record, factually are the AGENTS, ACTORS of the DPD employed to serve and protect, WE the People or to track, harass, assault, trespass, kidnap, capture and to hold someone, without a criminal record to exact unlawful Federal Reserve Notes or to secure a bond?

786. For the record, factually did the purported Court fail in City of Yakima v. Mollett, 63 P.3d 177 (Wash.App.2003)? "When judges order of cash - only bail, to insure the accused person does not get released, this is a violation, and the rule does not permit cash only bail."

787. For the record, factually did the purported Court hold correctly in Cordova v. Baca, 346 F.3d 924 (9th Cir. 2003)?

"If the right to counsel has not been effectively waived, the defendant is entitled to an automatic reversal of the conviction."

788. In the Matter of the Personal Restraint of Jose Grajeda, 579 F.2d. 406, 20 Wn. App. 249 (Wash.App.1978), did the purported Court correctly rule and vacate the plea because of the trial court's failure to comply with CrR 4.1(c)? At the time he entered his plea, Mr. Grajeda was advised of his right to counsel but proceeded without requesting appointment of counsel. The judge did not ascertain whether his waiver of counsel was made voluntarily, competently, and with knowledge of the consequences. The Court found that CrR 4.1(c) implements due process requirements as construed by the United States Supreme Court. The Court cited Carnley v. Cochrane, 369 U.S. 506, 516 (1962): Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence, which show, that an accused was offered counsel, but intelligently and understandingly rejected the offer. Anything less is not a waiver.

789. For the record, factually did the alleged Court error in State v. Hotrum 2000 WL 1022957 (Div. III, 2000) (unpublished) when it reversed several felony convictions because the court did not make a proper inquiry or record on waiver of counsel?

790. For the record, did the purported Court mistake in Bellevue v. Acrey, 651 F/2d 957, 103 Wn.2d 203, 207(1984)? "The court must indulge every reasonable presumption against waiver."

791. For the record, factually did the alleged Court fail in State v. DeWeese, 816 F.2d. 1, 117 Wn.2d 369, 377 (1991)? "The defendant's request to proceed pro se must be unequivocal. The court must establish that the defendant, in choosing to proceed pro se, makes a knowing and intelligent waiver of the right to counsel."

792. For the record, factually what is the meaning and definition of "pro se"?

793. For the record, factually what is the meaning and definition of "pro per"?

794. For the record, factually what is the meaning and definition of "in propria persona"?

795. For the record, factually what is the meaning and definition of "sui juris"?

796. For the record, factually did the purported Court error when it held in Faretta v. California, 422 U.S. 806 (1975)? "The defendant must be advised of the disadvantages of proceeding pro se."

797. For the record, factually did the alleged Court(s) error in State v. Hahn, 726 F.2d 25, 106 Wn.2d 885, 895 (1986); and State v. Nordstrom, 950 F/2d 946, 89 Wn. App. 737, 740□41 (1997)? "The court must determine that the defendant is competent and aware of the dangers and disadvantages of waiving his or her right to counsel."

798. For the record, factually when alleged JUDGE VICTOR C. LANDER plead for ME, Jeffrey Stuart, Katz and would not let ME express myself during the so-called hearing, how many violations of the law were committed?

799. For the record, factually did the alleged Court fail in Rickets v. Livingston, 2 Johns. Cas. (N.Y.) 97, 101? "Words should be understood effectively."

800. For the record, factually did the purported Court error when it held in Corning v. McCullough, 1 N.Y. 47, 69? "The meaning of a word may be ascertained by reference to the meaning of words associated it."

801. For the record, factually what is the meaning and definition of "the due process of law"?

802. For the record, factually if the due process of law is violated, would the above referenced cases be dismissed?

803. For the record, factually when the due process of law is violated, are there consequences for the offending party(s)?

804. For the record, factually are professed public servants sensible, reasonable, responsible and accountable for their

actions?

805. For the record, factually did the alleged Court mistake in Evans v. Board of Ed. of Hays, 284 P. 2d. 1068, 1071? "One is a servant who is employed by a master to perform service in his affairs and whose physical conduct in performance of the service is controlled by the master."

806. For the record, factually what is the meaning and definition of "to serve and protect"?

807. For the record, factually are the plaintiff(s) and or YOU responsible to the Citizens, citizens, residents or the inhabitants of Dallas?

808. For the record, factually what is the meaning and definition of "Citizen"?

809. For the record, factually what is the meaning and definition of "citizen"?

810. For the record, factually what is the meaning and definition of "resident"?

811. For the record, factually what is the meaning and definition of "non-resident"?

812. For the record, factually what is the meaning and definition of "non-resident alien"?

813. For the record, factually what is the meaning and definition of "inhabitant of the land and or sea"?

814. For the record, factually what is the meaning and definition of "WE the People"?

815. For the record, factually who do YOU, as an ASST. CITY ATTORNEY work for?

816. For the record, factually are YOU, as an ASST. CITY ATTORNEY responsible to WE the People?

817. For the record, factually how are YOU, as an ASST. CITY ATTORNEY paid?

818. For the record, factually what entity pays YOU, as an ASST. CITY ATTORNEY?

819. For the record, factually have YOU, as an ASST. CITY ATTORNEY ever met YOUR employer(s)?

820. For the record, factually have YOU, as an ASST. CITY ATTORNEY ever spoken directly with YOUR employer(s)?

821. For the record, factually if YOU, as an ASST. CITY ATTORNEY have never spoken with YOUR employer(s) how can YOU prove that YOU work for the employer(s) and YOU are not working for yourself?

822. For the record, factually how are YOU, as an ASST. CITY ATTORNEY compensated for YOUR work?

823. For the record, factually are YOU, as an ASST. CITY ATTORNEY paid commission or a percentage of all alleged traffic fines collected?

824. For the record, factually as an ASST. CITY ATTORNEY what does YOUR job description include?

825. For the record, factually as an ASST. CITY ATTORNEY is the work YOU do in law or do YOU act under the color of law?

826. For the record, factually are YOU, as an ASST. CITY ATTORNEY paid by check, which is convertible to Federal Reserve Note's?

827. For the record, factually what is the meaning and definition of "in law"?

828. For the record, factually what is the meaning and definition of "color of law"?

829. For the record, factually what is the meaning and definition of "traffic"?

830. For the record, factually what is the meaning and definition of "transportation"?

831. For the record, factually would YOU like to be paid by commission or a percentage of all alleged traffic fines collected?

832. For the record, factually do YOU as an ASST. DALLAS CITY ATTORNEYS take an "Oath of Office" to support the laws of State of Texas and the United States?

833. For the record, factually will YOU provide YOUR "Statement of Office" and YOUR "Oath of Office"?

834. For the record, factually are any DALLAS CITY or COUNTY JUDGES Masons?

835. For the record, factually are any DALLAS CITY or COUNTY JUDGES attorneys at law?

836. For the record, factually are any CITY or ASST. CITY ATTORNEYS Masons?

837. For the record, factually do CITY ATTORNEY'S have a license issued by the State of Texas to "practice law" or by the STATE OF TEXAS BAR ASSOCIATION?

838. For the record, factually will YOU provide YOUR Official "State of Texas License" to practice law?

839. For the record, factually is Schware v. Board of Examiners, U.S. Reports 353 U.S. pages 238, 239 correct?
"The practice of law cannot be licensed by any state/State."

840. For the record, factually did the purported Court mistake when it held in Sims v. Aherns, 271 SW 720 (1925)?
"The practice of law is an occupation of common right."

841. For the record, factually is justice for sale in the STATE OF TEXAS?

842. For the record, factually do Attorneys pay an Occupation Tax to the STATE OF TEXAS?

843. For the record, can YOU factually describe Texas history?

844. For the record, can YOU factually describe the historical importance of the Republic of Texas?

845. For the record, factually what is the difference between jury trials and trial by jury?

846. For the record, factually what is the meaning and definition of a "jury trial"?

847. For the record, factually what is the meaning and definition of a "trial by jury"?

848. For the record, factually did the alleged Courts error when it held in State of Georgia v. Brailsford, 3 Dall. 1,4; and U.S. v. Dougherty, 473 F.2d 1132-33?
"Juries are the judges of fact and law in American jurisprudence."

849. For the record, factually did the alleged Court error in Lumsden v. City of Milwaukee, 8 Wis. 485, 486?
"The administration of an oath is an indispensable requisite to the formation of a legal jury."

850. For the record, factually what is the meaning and definition of "a fair and unbiased trial"?

851. For the record, factually is it possible to get a fair trial from impartial jurors when All the jurors or participants are brainwashed, biased and prejudiced due to their political status?

852. For the record, factually what is the meaning and definition of "jury of my peers"?

853. For the record, factually since I , ME, Jeffrey Stuart Katz am not a U.S. Citizen, do not have a TEXAS DRIVER LICENSE (TDL), a U.S. SSN, and do not vote in STATE or NATIONAL elections how is it possible to seat a jury of my peers?

854. For the record, factually what is the meaning and definition of "freedom"?

855. For the record, factually what is the meaning and definition of "liberty"?

856. For the record, factually did Thomas Jefferson make clear the following?
"The price of liberty is eternal vigilance".

857. For the record, factually is it my choice to choose my political status?

858. For the record, factually what is the meaning and definition of "tyranny'?

859. For the record, factually what is the meaning and definition of a "license"?

860. For the record, factually who or what is required to have a "license"?

861. For the record, factually what is the purpose a "license"?

862. For the record, factually are licenses used to display one's competence?

863. For the record, factually what is the original meaning, intention and definition of "driver's license"?

864. For the record, factually what is the original meaning, intention and definition of "operator's license"?

865. For the record, factually what is the original meaning and definition of a "driver"?

866. For the record, factually what is the original meaning & definition of "operator"?

867. For the record, factually is there a law that requires ME, Jeffrey Stuart, Katz to have or carry a TDL?

868. For the record, factually does the STATE OF TEXAS demand a fee for the purchase of a TDL?

869. For the record, factually did the purported Court error in the holding in Murdock v. Pennsylvania, 319 U.S. 105? 'No state shall convert a liberty into a license, and charge a fee therefore."

870. For the record, did the alleged Court error in Shuttlesworth v. City of Birmingham, Alabama, 373 U.S. 262? "If the State converts a right (liberty) into a privilege, the citizen can ignore the license and fee and engage in the right (liberty) with impunity."

871. For the record, factually did the alleged Court error in House-Wives League v. Indianapolis, 185 NE 511? "Pedestrians and travelers have a right to use the streets for free and common passage."

872. For the record, factually did the purported Court error in Hassell v. State, 149 Tex. Crim. 333, 194 S.W. 2d 400? "An information alleging that the defendant operated a motor vehicle upon a highway without a "drivers license" was held insufficient to charge an offense since driver's license is not known to law."

873. For the record, factuality is a driver's license actually an operator's license?

874. For the record, factually did the purported Court mistake in Barber v. State, 149 Tex. Crim. 18, 191 S.W.2d 879? "A complaint charging the operation of an automobile and failure to display operator's license, on demand of a peace officer, was held insufficient to charge offense in the absence of an allegation that accused was on the date of the alleged offense, a license."

875. For the record, factually did the purported Court error in Chicago Motor Coach v. Chicago, 169 NE 221? "The use of the highway for the purpose of travel and transportation in not a mere privilege, but a common fundamental right of which the public and individuals cannot rightfully be deprived."

876. For the record, factually did the purported Court error can it be stated more directly or conclusively that citizens of states have a common law right to travel, without approval, or restriction (license), and that right is protected by the U.S. Constitution when the Court held in Thompson v. Smith, 154 S.E. 579? "The right of the citizen to travel upon the public highways and to transport his property thereon, either by carriage or automobile, is not a mere privilege which a city may prohibit or permit at will, but a common law right which he has under the right to life, liberty and the pursuit of happiness.

877. For the record, factually did the purported Court error in Berberian v. Lussier, 139 A2d 869, 872 (1958)? "The use of the automobile as a necessary adjunct to the earning of a livelihood in modern life requires us in the interest of realism to conclude that the Right to use an automobile on the public highways partakes if the nature of a liberty within the meaning of the Constitution guarantees ..."

878. For the record, did the purported Court error in Schactman v. Dulles, 96 App DC 287, 225 F2d 938 at 941? "The right to travel is a well established common right that does not owe its existence to he federal government. It is recognized by the courts as a natural right."

879. For the record, factually did Samuel Adams speak the truth when he said? "Among the natural rights of the Colonists are these: first, a right to life; secondly, to liberty; thirdly, to property; together with the right to support and defend them in the best manner they can"....

880. For the record, factually what is the meaning and definition of "natural rights"?

881. For the record, factually what is the meaning and definition of "fundamental rights"?

882. For the record, did the purported Court error in Hertado v. California, 110 US 526?

"The state cannot diminish rights of the people."

883. For the record, what is the intention of the purported Court when it held in Bennett v. Boggs, 1 Baldw 60?

"Statutes that violate the plain and obvious principles of common right and common reason are null and void."

884. Factually what was the intent of Justice Louis Brandeis in O'Gorman& Young, Inc. v. Hartford Fire Insurance Co.?

"The statute here questioned deals with a subject clearly "within the scope of the police power. We are asked to declare it void on the ground that the specific method of regulation "prescribed is unreasonable and hence deprives the plaintiff "of due process of law. As underlying questions of fact may "condition the constitutionality of legislation of this character, "the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute."

885. For the record, factually did the alleged Court explain satisfactorily the difference between the right to travel in the ordinary course of life and business, from the business that makes its' profit from the use of the streets i.e. taxis, buses etc. in Ex parte Dickey, 76 W. Va. 576 85 S.E. 781, L.R.A. 1915F, 840?

"The right of a citizen to travel upon the highway and transport his property thereon, in the ordinary course of life and business, differs radically and obviously from that of one who makes the highway his place of business and uses it for private gain, in the running of a stage coach or omnibus. The former is the usual and ordinary right of a citizen, a common right, a right common to all, while the latter is special, unusual and extraordinary. As to the former, the extent of legislative power is that of regulation; but, as to the latter, its power is broader, the right may be wholly denied, or it may be permitted to some and denied to others, because of its extraordinary nature. This distinction, elementary and fundamental in character, is recognized by all the authorities. 'A distinction must be made between the general use, which all of the public are permitted to make of the street for ordinary purposes, and the special and peculiar use, which is made by classes of persons in the pursuit of their occupation or business, such as hackmen, drivers of express wagons, omnibuses,' etc..."

886. For the record, factually are the fictitious plaintiffs a.k.a. the STATE OF TEXAS, the COUNTY OF DALLAS and the CITY OF DALLAS "legal fictions" or "artificial entities", which are the figments of the imagination only?

887. For the record, factually is it possible to speak directly with the plaintiffs or are the STATE OF TEXAS, the COUNTY OF DALLAS, and, the CITY OF DALLAS imaginary, have NO substance and do not exist?

888. For the record, factually did the supposed Court hold correctly in Hibberd v. Smith, 67 Cal. 547?

"A fiction is a rule of law that assumes something that is or may be false as true."

889. For the record, factually what is the significance of the Court's holding in Davis v. Wechsler, 263 US 22 at 24?

"The assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice."?

890. For the record, factually did the purported Court hold correctly in Miranda v. Arizona, 384 US 436, 491?

"When rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."?

891. For the record, factually are AGENT, ACTOR GUENTHER'S, et.al. actions' in agreement and harmony with the purported Court holding in Sherer v. Cullen, 481 F 946?

"There can be no sanction or penalty imposed upon one because of this exercise of constitutional rights."

892. For the record, factually did the purported Court correctly state in Hale v. Henkel, 201 U.S. 43 (1905)?

"The individual may stand upon his Constitutional rights as a Citizen. He is entitled to carry on his private

business in his own way. His power to contract is unlimited. He owes no duty to the state or to his neighbors to divulge his business, or to open his door to an investigation, so far as it may tend to incriminate him. He owes no such duty to the state, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the state. ... He owes nothing to the public so long as he does not trespass upon their rights."

893. For the record, factually what is the meaning and definition of an "Constitutional Right"?

894. For the record, did the alleged Court fail when it held in Adams v. New York, 192 U.S. 585 , 48 L. ed. 575, 24 Sup. Ct. Rep. 372?

"... The 4th Amendment was intended to secure the citizen in person and property against unlawful invasion of the sanctity of his home by officers of the law, acting under legislative or judicial sanction."

895. For the record, factually did Justice Brandeis state correctly in Olmstead v. United States (1928)?

"The makers of the Constitution conferred, as against the government, the Right to be left alone; the most comprehensive of rights, and the right most valued by civilized men."

896. For the record, factually did the alleged Court error when it held in Norton v. Shelby County, 118 U.S. 425, 442?

"An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it never been passed."

897. For the record, factually are the plaintiff(s) and or the principle(s) capable, qualified or deaf, blind and stupid, therefore are incapable of having a sensible, reasonable intelligent dialog or conversation?

898. For the record, factually what is the stated purpose of the STATE OF TEXAS?

899. For the record, factually what is the difference between the STATE OF TEXAS and the State of Texas?

900. For the record, factually what does the STATE OF TEXAS, and the COUNTY OF DALLAS do with the ill-gotten funds collected from the sale of the TEXAS DRIVER LICENSES?

901. For the record, factually what does the STATE OF TEXAS, and the COUNTY OF DALLAS do with the funds collected when WE the People inappropriately register OUR private conveyances as a motor vehicles as described on the APPLICATION OF CERTIFICATE OF TITLE?

902. For the record, factually disprove the State of Texas and its' employees are racketeering across state lines by aiding and abetting criminal conversion of the Manufacturer's Statements of Origin (MSO) issued by foreign and domestic automobile manufacturers, in violation the Racketeering Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. 1961 et seq.

903. For the record, will YOU provide the Comprehensive Annual Financial Report (CAFR) for the STATE OF TEXAS, the COUNTY OF DALLAS and the CITY OF DALLAS?

904. For the record, factually when AGENTS, ACTORS of the STATE OF TEXAS, a.k.a. as automobile or car dealerships, charge and collect STATE SALES TAX is this a form of extortion, since the acceptance and the collection of Federal Reserve Notes is contrary to the intent of TCCrP 43.02?

905. For the record, factually can YOU satisfy the PLAINTIFF(S) demand and abide by the intent of TCCrP 43.02?

TCCrP 43.02 Payable in Money

"All recognizances, bail bonds and undertakings of any kind, whereby a party becomes bound to pay money to the State, and all fines and forfeitures of a pecuniary character shall be collected in the lawful money of the United States only."

906. For the record, factually did the alleged Court hold correctly in Jackson v. Bradford, 4 Wend. (N.Y.) 619?

"No man can give that which he has not."

907. For the record, factually was Thomas Jefferson correct clear when he stated in the Debate Over the Recharter of the Bank Bill?

"I believe that banking institutions are more dangerous to our liberties than standing armies . . . If the American people ever allow private banks to control the issue of their currency, first by inflation, then by deflation, the banks and corporations that will grow up around [the banks] . . . will deprive the people of all property until their children wake-up homeless on the continent their fathers conquered . . . The issuing power should be taken from the banks and restored to the people, to whom it properly belongs".

908. For the record, factually did Abraham Lincoln thoroughly explain this essential function of government?

"The privilege of creating and issuing money is not only the supreme prerogative of Government, but is the Government's greatest creative opportunity. Study the Constitution! Let it be preached from the pulpit, proclaimed in legislatures, and enforced in courts of justice ...that this nation, under G-d, shall have a new birth of freedom".

909. For the record, factually what is the meaning and definition of "Motor vehicle"?

910. For the record, factually what does the U.S. Constitution say regarding the supremacy clause?

911. For the record, factually did the United States Government error in 18 USC § 31 (6) "Motor vehicle"?

"The term "motor vehicle" means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, passengers and property, or property or cargo."?

912. For the record, factually did the U.S. Government error in 18 USC § 31 (10) "Used for commercial purposes"?

"The terms "used for commercial purposes" means the carriage of persons or property for any fare, fee, rate, charge or other consideration, or directly or indirectly in connection with any business, or other undertaking for profit."?

913. For the record, factually did the alleged mistake in Decker v. City of Wichita, 109 Kan. 796, 202 Pac. 89?

"The right of a citizen to travel upon the highway and transport his property thereon, in the ordinary course of life and business, differs radically & obviously from that of one who makes the highway his place of business and uses it for private gain, in the running of a stagecoach or omnibus. The former is the usual and ordinary right of a citizen, a common right, a right common to all, while the latter is special, unusual, and extraordinary. As to the former, the extent of legislative power is that of regulation; but, as to the latter, its power is broader. The right may be wholly denied, or it may be permitted to some and denied to others, because of its extraordinary nature. This distinction, elementary and fundamental in character, is recognized by all the authorities."

914. For the record, factually did the purported Court error when it held in Coffin v. Ogden, 85 U.S. 120, 124?

"The law requires, not conjecture, but certainty."

915. For the record, factually did the alleged Court mistake in Larkin v. Consolidated Telegraph, 85 N.Y.S. (2d) 631?

"An act of legislature to have force of law must be intelligibly expressed and when to vague is a nullity."

916. For the record, factually which AGENTS and or ACTORS are required to take an "Oath of Office" to uphold the laws of the State of Texas and the United States?

917. For the record, factually can the government legally put restrictions on the rights of the American or Texian people at anytime, for any reason?

918. For the record, factually is Article VI of the U.S. Constitution clear?

"This Constitution, and the laws of the United States which shall be made in Pursuance thereof ... shall be supreme Law of the Land, and the Judges in every State shall be bound thereby, any Thing in the Constitution or laws of any State to the Contrary not one word withstanding ... The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and of all of the executive and judicial Officers, both of the United States made of the several States shall bound by Oath or Affirmation to support the Constitution..."

919. For the record, factually if an AGENT, ACTOR assumes a position in the supposed government and did not take an "Oath of Office", what are consequences of such actions?

920. For the record, factually are AGENTS and or ACTORS liable for damages that THEY create?

921. For the record, factually is the principle (Plaintiff) responsible, when one of its' AGENTS or ACTORS damages ME, Jeffrey Stuart, Katz?

922. For the record, factually are All GOVERNMENT AGENTS, ACTORS trained, educated, and paid to know and enforce the law?

923. For the record, factually what is the meaning and definition of "private conveyance"?

924. For the record, factually can YOU provide the government code or law that proves that I, ME cannot own "private property"?

925. For the record, factually can you dispute, the following, "If YOU do not own YOUR property, YOU have and own nothing?"

926. For the record, factually can you dispute, the following, "Since Federal Reserve Notes have no value to themselves, Federal Reserve Notes (legal tender – currency) are worth less everyday."

927. For the record, factually what is the meaning and definition of "legal tender"?

928. For the record, factually what is the meaning and definition of "currency"?

929. For the record, factually what is the meaning and definition of "revenue"?

930. For the record, factually what is the meaning and definition of "promissory notes"?

931. For the record, factually do Federal Reserve Notes qualify as promissory notes?

932. For the record, factually are Federal Reserve Notes considered "cash"?

933. For the record, factually do CITY OF DALLAS Parking Violation(s) correctly state DO NOT SEND CASH?

934. For the record, factually do CITY OF DALLAS Parking Violations correctly state DO NO SEND CASH pursuant to TCCrP 43.02?

935. For the record, factually did the purported Court error when it held in Clark v. State, 3 Cr.R. 338 (1877)?

"A promissory note can note be accepted in payment of a fine."

936. For the record, factually can you dispute, the following; "Since gold and silver have value and substance, gold and silver are property, so everyone in society participates, has means, and enjoys the profits from the wealth and strength of their nation"?

937. For the record, factually can you dispute, the following; "When a society's weights and measures are unjust, that society is doomed to fail"?

938. For the record, factually what is the meaning and definition of "Allodial title"?

939. For the record, factually did the alleged Court error when it held in Barker v. Dayton, 28 Wis. 367, 377?

"Alloidial land is that possessed by a man I his own right, free and absolute, without owing any rent or service to

any superior."

940. For the record, factually did the Court error when it held in Teche Lines v. Danforth, Miss. 12 So 2d 784, 787?
"The right to travel on the public highways is a constitutional right."

941. For the record, factually is the purported Court in error when it held in Miller vs. U.S., F486, 489?
"The claim and exercise of a constitutional Right cannot be converted into a crime."

942. For the record, factually can you dispute the following, "In a mature, free society, is the most basic right, the liberty and freedom to travel safely all day and or night, to come and go, with private property, to conduct affairs, have intercourse, All in the pursuit of YOUR happiness without any governmental interference and or obstruction?"

943. For the record, factually did the purported Court properly hold in Union Pac. Ry. v. Botsford, 141 U.S. 250, 251?
"No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear or unquestionable authority."

944. For the record, factually how are the actions of the DALLAS POLICE DEPT. contrary to Thomas Jefferson's statement?
"The policy of the American government is to leave their citizens free, neither restraining nor aiding them in their pursuits."

945. For the record, factually was the Court correct in Connolly vs. Union Sewer Pipe Co., 184 US 540?
"With regard particularly to the U.S. Constitution, it is elementary that a Right secured or protected by that document cannot be overthrown or impaired by any state police authority."

946. For the record, factually are YOU and the alleged PLAINTIFFS interested, concerned about the public's safety?

947. For the record, factually are most members of the public at large U.S. Citizens?

948. For the record, factually were U.S. Citizens created by the 14th Amendment of the Constitution of the United States after the Civil War?

949. For the record, factually did the 14th Amendment of the Constitution of the United States free the slaves or enslave the free?

950. For the record, factually before the Civil War were All citizens "State Citizens"?

951. For the record, factually what rights do Texas State citizens have?

952. For the record, factually are there differences between an U.S. Citizen, a State Citizen and an American National?

953. For the record, factually is the STATE OF TEXAS, the COUNTY and or the CITY OF DALLAS interested in my safety?

954. For the record, factually did the alleged Court error when it held in McInerney v. Ervin, (Fla) 46 So. 2d 458, 463?
"The welfare of the people is the supreme law."

955. For the record, factually is a State of Texas Tax Exempt License Plate available that may alert the ignorant that I belong to a specific political group, have lawful status and own this private conveyance?

956. For the record, factually if this plate is not available, what MUST take place, so a plate is available?

957. For the record, factually did the alleged Court error when it held in Schechter v. United States, 295 U.S. 495, 528?
"Extraordinary conditions may call for extraordinary remedies."

958. For the record, factually am I, Jeffrey Stuart, of the family Katz entitled to a fair and speedy trial, with a jury of my peers?

959. For the record, factually did John Quincy Adams correctly state?

"It is not only the juror's right, but his duty to find the verdict according to his own best understanding, judgment and conscience, though in direct opposition to the instruction of the court".

960. For the record, factually what is the meaning and definition "public transportation"?

961. For the record, factually what is the meaning and definition of "private transportation"?

962. For the record, factually what is the meaning and definition of "operating"?

963. For the record, factually what is the meaning and definition of "driving"?

964. For the record, factually do truck, cab, limo, and bus drivers drive and work hard?

965. For the record, factually is driving or delivering passengers, goods and cargo a respectable profession?

966. For the record, factually are truck, cab, limo, and bus drivers compensated or paid to drive?

967. For the record, factually would these (wo)men drive or work if they were not compensated or paid?

968. For the record, factually when the "If you Drink & Drive – You lose", this is brought to you by the U.S. Dept of Transportation" commercials are aired, over the government controlled, licensed public air-waives is this a form of false, misleading advertising to facilitate a myth, to hide and disguise the truth, from WE the People, that WE are NOT required to register OUR private conveyances a.k.a. automobiles?

969. For the record, factually is it the duty and responsibility of the U.S. Dept. of Transportation to use plain and clear language, not obfuscate the truth through omission?

970. For the record, factually are alleged JUDGES, ACTORS, AGENTS, et. al. compensated or paid?

971. For the record, if the JUDGES, ACTORS, AGENTS, et. al. are not compensated, would the work be done?

972. For the record, factually how are alleged JUDGES, ACTORS, AGENTS, and CITY ATTORNEYS compensated?

973. For the record, factually why would truck, cab, limo drivers continue to work when not compensated or paid?

974. For the record, factually what makes YOU or the PLAINTIFFS, think or believe I would or should work and not be compensated?

975. For the record, factually are YOU familiar with the following phrase, "No pay, no work"?

976. For the record, factually is it wise to work and not to be compensated for YOUR effort?

977. For the record, factually do YOU wage a war everyday for life, liberty, property and the pursuit of happiness?

978. For the record, factually is one of the functions of government to provide for the life, liberty, property and the pursuit of happiness?

979. For the record, factually what are the differences between private, personal, and commercial property?

980. For the record, factually does property have to be rendered for taxation?

981. For the record, factually what is the meaning and definition of "rendered"?

982. For the record, factually can government tax property without compensating the owner of the property?

983. For the record, factually how is property placed on the tax rolls?

984. For the record, factually what is the purpose of a "steering"?

985. For the record, factually what is the purpose of the steering wheel in my "private conveyance"?

986. For the record, factually what is the meaning and definition of "steering"?

987. For the record, factually what is the meaning and definition of a "steering wheel"?

988. For the record, factually what is the purpose of a steering wheel?

989. For the record, factually are taxicabs or limos, defined as motor vehicles?

990. For the record, factually what is the meaning and definition of "passenger car"?

991. For the record, factually what is the meaning and definition of "taxicabs"?

992. For the record, factually what is the meaning and definition of "motor vehicle(s)"?

993. For the record, factually what is the meaning and definition of "jitney"?

994. For the record, factually did the purported Court error when it held in Payne v. Massey, 196 SW2d 493? "A taxicab is classified as a 'passenger car'..."?

995. For the record, factually are airlines, trains, taxicabs, limos and ocean liner regulated?

996. For the record, factually are these industries, businesses regulated since they are involved with public transportation?

997. For the record, factually are taxi cabs and limos involved with public transportation?

998. For the record, factually when I travel in my private conveyance, am I involved in public transportation?

999. For the record, factually when I travel in or on a private yacht, am I involved in public transportation?

1000. For the record, factually am I required by law to purchase a license to steer and travel (o)in a private yacht?

1001. For the record, factually provide the law that requires ME to purchase a license to own or operate a motor or sailing yacht or vessel?

1002. For the record, factually am I required to have a Captain's License to prove I am responsible and capable to operate a vessel upon the water, when I have passengers and I am for hire?

1003. For the record, factually am I responsible for my wake that I create when I travel in my vessel upon the water?

1004. For the record, factually what is the meaning and definition of "negligence"?

1005. For the record, factually do passengers hire and then instruct the cab or limo driver(s) where to take them or go?

1006. For the record, factually do airline passengers choose where they are going and then travel to that destination?

1007. For the record, factually when I am traveling to a destination of my choice am I open or available to the public?

1008. For the record, factually are there signs along I-45 in the CITY OF HOUSTON indicate the travel time between destinations since WE All travel?

1009. For the record, factually who operates and maintains these large signs?

1010. For the record, factually did I indicate to AGENT, ACTOR GUENTHER that I am for hire and would welcome passengers in my private conveyance?

1011. For the record, factually would YOU or the imaginary PLAINTIFFS charge a fee or fare to YOUR guests, friends or family to take them to their destination, when YOU are going there too?

1012. For the record, factually if a guest wants to help towards expenses does that change his or her status as a guest?

1013. For the record, factually if a guest chooses to reimburse ME for fuel and or time, does that make ME a driver when I am not available to the public at large or involved in public transportation?

1014. For the record, factually does the STATE OF TEXAS and the COUNTY OF DALLAS profit through the sale of license plates?

1015. For the record, factually what is the meaning and definition of "fraud"?

1016. For the record, factually what is the meaning and definition of "fraud by deceit"?

1017. For the record, factually what is the meaning and definition of "fraud by omission"?

1018. For the record, factually what is the meaning and definition of "actionable fraud"?

1019. For the record, factually what is the meaning and definition of "actionable negligence"?

1020. For the record, factually what is the "statute of limitation on fraud"?

1021. For the record, factually what is the meaning and definition of "guest"?

1022. For the record, factually what is the meaning and definition of a "passenger(s)"?

1023. For the record, factually do passengers pay for passage?

1024. For the record, factually when passengers do not pay for passage is that theft of services, and a Class "C" Misdemeanor?

1025. For the record, factually what is the meaning and definition of "theft of services"?

1026. For the record, factually does DART prosecute theft of services, as a Class "C" Misdemeanor?

1027. For the record, factually does DART collect Federal Reserve Notes, which are contrary to the intent of TCCrP 43.02?

1028. For the record, factually is it (Y)OUR choice whether YOU have a "guest" in (Y)OUR home, castle, yacht, or YOUR private conveyance?

1029. For the record, factually how is it possible for a third party to know the relationship between my guest and I, whether my guest in my home (castle), or on a yacht or private conveyance or automobile?

1030. For the record, factually is the alleged complaint frivolous and fatally defective pursuant to TCCrP Art. 15.04 when affiant does not have first knowledge of the event in question?

Art. 15.04. [221] [268] [256] Complaint

"The affidavit made before the magistrate or district or county attorney is called a "complaint" if it charges the commission of an offense."

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

1031. For the record, factually if the complaint(s) issued by SYLVIA PEREZ are not based on her first hand knowledge are the complaint(s) are hearsay?

1032. For the record, factually is it mandatory for SYLVIA PEREZ to have first hand knowledge to make an accusation or a claim?

1033. For the record, factually is it mandatory for SYLVIA PEREZ to have first hand knowledge to file a valid, lawful criminal complaint?

1034. For the record, factually if SYLVIA PEREZ does not have first hand or direct knowledge of the event(s), how can SYLVIA PEREZ testify to the truth, when SYLVIA PEREZ does not know the truth?

1035. For the record, factually what is the meaning and definition of a "valid criminal complaint"?

1036. For the record, factually must a valid, lawful affidavit accompany a criminal complaint?

1037. For the record, factually how is it possible for a criminal complaint to be made SYLVIA PEREZ when she works and is paid by one of my adversaries?

1038. For the record, factually will SYLVIA PEREZ be available to take a polygraph examination?

1039. For the record, factually is SYLVIA PEREZ'S credibility in dispute, when in all 5 alleged complaints she claimed she was a he?

1040. For the record, did the alleged Court fail in Cantu v. Holiday Inns, Inc., 910 S.W.2d 113, 116 (Tex. App. Corpus Christi (1995)?

"No writ attorney's verification was insufficient when pleadings and affidavit did not show any basis for personal knowledge of relevant facts."

1041. For the record, factually since I object to the alleged complaint(s) pursuant to Art. 45.019. (a) (2), (3) and [A]ll complaints are defective, therefore will the alleged charges be dropped against the ME, Jeffrey Stuart, Katz?

Art. 45.019. [883] [973] [938] Requisites of Complaint

(a) A complaint is sufficient, without regard to its form, if it substantially satisfies the following requisites:

(1) it must be in writing;

(2) it must commence "In the name and by the authority of the State of Texas";

(3) it must state the name of the accused, if known, or if unknown, must include a reasonably definite description of the accused;

(4) it must show that the accused has committed an offense against the law of this state, or state that the affiant has good reason to believe and does believe that the accused has committed an offense against the law of this state;

(5) it must state the date the offense was committed as definitely as the affiant is able to provide;

(6) it must bear the signature or mark of the affiant; and

(7) it must conclude with the words "Against the peace and dignity of the State" and, if the offense charged is an offense only under a municipal ordinance, it may also conclude with the words "Contrary to the said ordinance".

(b) A complaint filed in justice court must allege that the offense was committed in the county in which the complaint is made.

(c) A complaint filed in municipal court must allege that the offense was committed in the territorial limits of the municipality in which the complaint is made.

(d) A complaint may be sworn to before any officer authorized to administer oaths.

(e) A complaint in municipal court may be sworn to before:

(1) the municipal judge;

(2) the clerk of the court or a deputy clerk;

(3) the city secretary; or

(4) the city attorney or a deputy city attorney.

(f) If the defendant does not object to a defect, error, or irregularity of form or substance in a charging instrument before the date on which the trial on the merits commences, the defendant waives and forfeits the right to object to the defect, error, or irregularity. Nothing in this article prohibits a trial court from requiring that an objection to a charging instrument be made at an earlier time.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Renumbered from Vernon's Ann.C.C.P. art. 45.17 and amended by Acts 1999, 76th Leg., ch. 1545, Sec. 16, eff. Sept. 1, 1999.

1042. For the record, factually if I objected that the alleged complaint(s) are defective pursuant to Article 1, § 5 of the alleged State of Texas Constitution adopted Feb. 15, 1876, would the alleged charges be dismissed?

Sec. 5. WITNESSES NOT DISQUALIFIED BY RELIGIOUS BELIEFS; OATHS & AFFIRMATIONS.

"No person shall be disqualified to give evidence in any of the Courts of this State on account of his religious opinions, or for the want of any religious belief, but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury."

1043. For the record, factually what is the intent of Article 1, § 5; "... all oaths or affirmations ... shall be taken subject to the pains and penalties of perjury" found in State of Texas Constitution?

1044. For the record, factually does Article 1, § 5 of the alleged State of Texas Constitution adopted Feb. 15, 1876, disqualify, invalidate, and void all Oaths of Office of the participants of this conspiracy against ME, Jeffrey Stuart, Katz?

1045. For the record, factually if I demanded that the case(s) be dismissed on the grounds that AGENT, ACTOR GUENTHER has not brought forth any physical evidence of wrongdoing or any independent witnesses corroborating his testimony, unless AGENT, ACTOR GUENTHER is willing to wave his immunity against the pains and penalties of perjury?

1046. For the record, factually is an attorney the only qualified representative of MUNICIPAL (or CITY), COUNTY OR STATE CORPORATION(S)?

1047. For the record, factually can YOU provide the criminal complaint filed by the qualified representative for the alleged PLAINTIFF against ME, Jeffrey Stuart, Katz?

1048. For the record, factually since the complaints are bogus, fabricated and are an attempt to extort unlawful funds from the legal fiction, JEFFERY STUART KATZ, do these events prove that a conspiracy exists against ME, Jeffrey Stuart, Katz?

1049. For the record, factually why are the complaint(s) not titled criminal complaint(s)?

1050. For the record, factually since the alleged complaint(s) are not "subject to the pains and penalties of perjury" is this proof positive that the complaint(s) are bogus, and a fraud upon the alleged MUNICIPAL COURT OF DALLAS?

1051. For the record, factually what is the meaning and definition of "under penalty for perjury"?

1052. For the record, factually what are the penalties for falsifying the court record?

1053. For the record, factually what is the meaning and definition of "competent evidence"?

1054. For the record, factually what is the meaning and definition of "definitive proof"?

1055. For the record, factually if I, Jeffrey Stuart, Katz entered a plea I would be validating false information upon the alleged Court and there could be adverse consequences?

Art. 27.17. [521] [585] [574] Plea of not guilty construed

The plea of not guilty shall be construed to be a denial of every material allegation in the indictment or information. Under this plea, evidence to establish the insanity of defendant, and every fact whatever tending to acquit him of the accusation may be introduced, except such facts as are proper for a special plea under Article 27.05.

Acts 1965, 59th Leg., p. 317, ch. 722, Sec. 1, eff. Jan. 1, 1966.

1056. For the record, factually did the purported Court error when it held in People v. Bliss, 278 N.Y.S. 2d 732, 735? "Traffic infractions are not crimes."

1057. For the record, factually what are "traffic infractions"?

1058. Factually does AGENT, ACTOR GUENTHER have constitutional authority to order or demand anything, when he is wearing a sidearm?

1059. For the record, factually can YOU provide the competent evidence supportive of the alleged PLAINTIFF'S action?

1060. For the record, factually did the alleged Court error in Cinco Enterprises Ins. v. Benso, Okla., 890 P2d 866(1994)? "Unsupported contentions of material fact are not sufficient on motion for summary judgment, but rather, material facts must be supported by affidavits and other testimony and documents that would be admissible in evidence at trial."

1061. For the record, factually did the purported Courts hold incorrectly in Addington v. Allen, 11 Wend. (N.Y.) 374, 417; and Paul v. Haddley, 23 Barb. (N.Y.) 521, 525?

"Suppression of the truth is equivalent to the expression (or suggestion) of what is false."

1062. For the record, factually did the purported Court error when it held in Gerrity v. Brady, 44 Ill. App. 2003? "Fact in pleading is circumstance, act, event, or incident, while truth is legal principle which declares or governs facts in their operation and effect."

1063. For the record, factually what is the meaning and definition of "hearsay evidence"?

1064. For the record, factually can this complaint be described as "hearsay evidence"?

1065. For the record, factually what is the meaning and definition of "bribery"?

1066. For the record, factually is it a crime for an alleged public servant to be bribed?

1067. For the record, factually is bribing public officials standard operating procedure and commonplace in the STATE OF TEXAS?

1068. For the record, factually what is the meaning and definition of "on or about"?

1069. For the record, factually does the term "on or about" indicate that the party does not know the facts, since it is obvious they cannot testify when the alleged event occurred?

1070. For the record, factually as ASST. CITY ATTORNEY are YOU qualified to make a "legal determination"?

1071. For the record, factually what is the meaning and definition of "qualified"?

1072. For the record, factually as an ASST. CITY ATTORNEY what is YOUR legal expertise and or training?

1073. For the record, factually how many years did YOU study the law?

1074. For the record, factually what school did YOU attend?

1075. For the record, factually are YOU an U.S. Citizen?

1076. For the record, factually do YOU have a Texas Driver License?

1077. For the record, factually can YOU, et.al. produce the statute in the law that requires someone to maintain a Texas Driver License to travel in an automobile or a private conveyance?

1078. For the record, factually do YOU have an SSN?

1079. For the record, factually if YOU possess a TDL or a SSN how is possible to be fair and impartial?

1080. For the record, factually if YOU possess a TDL or a SSN are YOU prejudiced?

1081. For the record, factually what is the meaning and definition of "commerce and trade"?

1082. For the record, factually what is the meaning and definition of "interstate commerce"?

1083. For the record, factually what is the meaning and definition of "intrastate commerce"?

1084. For the record, factually why does AGENT, ACTOR GUENTHER think I, do not have the right to travel freely upon the public right of way?

1085. For the record, factually how did AGENT, ACTOR GUENTHER, et. al. determine I do not have the right to travel freely upon the public right of way?

1086. For the record, factually did the Court error when it held in Coolidge v. Brigham, 1 Metc. (Mass.) 547, 551? "Good faith must be observed."

1087. For the record, factually did the "right to travel" emerge as early as the "Magna Charter"?

1088. For the record, factually did the purported Court error when it held in Kent vs. Dules, 357 US 116 (1958)? "The right to travel is part of the liberty of which a citizen cannot be deprived without due process law under the 5th Amendment. This Right was emerging as early as the Magna Carta."

1089. For the record, factually what is the "Magna Charter".

1090. For the record, factually what is importance and or significance of the "Magna Charter"?

1091. For the record, do YOU agree with Justice Frankfurter's opinion in Solesbee v. Balkcom, 339 U.S. 9, 16 (1950)

due process is violated if a practice or rule "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."

1092. For the record, factually what is the meaning and definition of "fundamental"?

1093. For the record, factually do YOU agree with the following statement(s) regarding the "Due Process of the Law"?

"It is now the settled doctrine of this Court that the Due Process Clause embodies a system of rights based on moral principles so deeply imbedded in the traditions and feelings of our people as to be deemed fundamental to a civilized society as conceived by our whole history. Due Process is that which comports with the deepest notions of what is fair and right and just."

1094. For the record, factually do YOU agree with the following statement(s) regarding the English history of "Due Process of the Law"?

The content of due process is "a historical product" that traces all the way back to chapter 39 of Magna Carta, in which King John promised that "[n]o free man shall be taken or imprisoned or disseized or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land."

The phrase "due process of law" first appeared in a statutory rendition of this chapter in 1354. "No man of what state or condition he be, shall be put out of his lands or tenements nor taken, nor disinherited, nor put to death, without he be brought to answer by due process of law."

Though Magna Carta was in essence the result of a struggle over interest between the King and his barons,5 this particular clause over time transcended any such limitation of scope, and throughout the 14th century parliamentary interpretation expanded far beyond the intention of any of its drafters.6

1095. For the record, factually do YOU agree with the following statement(s) concerning the American history of "Due Process of the Law"?

The understanding which the founders of the American constitutional system, and those who wrote the due process clauses, brought to the subject they derived from Coke, who in his Second Institutes expounded the proposition that the term "by law of the land" was equivalent to "due process of law," which he in turn defined as "by due process of the common law," that is, "by the indictment or presentment of good and lawful men . . . or by writ original of the Common Law."

The significance of both terms was procedural, but there was in Coke's writings on chapter 29 a rudimentary concept of substantive restrictions, which did not develop in England because of parliamentary supremacy, but which was to flower in the United States.

1096. For the record, factually is the following statement the truth?

The term "law of the land" was early the preferred expression in colonial charters and declarations of rights, which gave way to the term "due process of law," although some state constitutions continued to employ both terms. Whichever phraseology was used, the expression seems generally to have occurred in close association with precise safeguards of accused persons, but, as is true of the 5th Amendment here under consideration, the provision also suggests some limitations on substance because of its association with the guarantee of just compensation upon the taking of private property for public use.

1097. For the record, factually what is the meaning and definition "private property?

1098. For the record, factually can YOU as ASST. CITY ATTORNEY provide the legislative act that denies ME the right to have, hold and own private property in the State of Texas, et.al.?

1099. For the record, factually what is the meaning and definition of "the public right of way"?

1100. For the record, factually what is the meaning and definition of "highway robbery "?

1101. For the record, factually what is the meaning and definition of "highwayman"?

1102. For the record, factually what is the meaning and definition of "conspiracy"?

1103. For the record, factually what is the meaning and definition of "racketeering"?

1104. For the record, factually what is the meaning and definition of "nihilist"?

1105. For the record, factually what is the meaning and definition of "the Doctrine of Nihilism"?

1106. For the record, factually can YOU provide the law that requires ME, Jeffrey Stuart, Katz to have an SSN?

1107. For the record, factually how are jurors selected in the alleged CITY OF DALLAS MUNICIPAL COURT?

1108. For the record, factually if I were not in the STATE OF TEXAS, the COUNTY OF DALLAS, the CITY OF DALLAS would I, ME, Jeffrey Stuart, from the family of Katz, be given citations by AGENTS, ACTORS of the DALLAS POLICE DEPT.?

1109. For the record, factually will the STATE OF TEXAS, the COUNTY or CITY OF DALLAS produce the citations presented to ME, Jeffrey Stuart, Katz by AGENT, ACTOR GUENTHER pursuant to

TEXAS TRANSPORTATION CODE CHAPTER 543. ARREST AND PROSECUTION OF VIOLATORS.

SUBCHAPTER A. ARREST AND CHARGING PROCEDURES; NOTICES AND NOTICES TO APPEAR

§ 543.003. Notice to Appear Required; Person Not Taken Before Magistrate

An officer who arrests a person for a violation of this subtitle punishable as a misdemeanor and who does not take the person before a magistrate shall issue a written notice to appear in court showing the time and place the person is to appear, the offense charged, the name and address of his person charged, and, if applicable, the license number of he person's vehicle.

1110. For the record, factually how does that actions of AGENT, ACTOR GUENTHER contradict Article 1 § 18 of the 1876 Texas Constitution which states, "No person shall ever be imprisoned for debt."

1111. For the record, factually since AGENT, ACTOR, GUENTHER created the legal fiction, JEFFERY STUART KATZ, out of thin air, how is it possible for the artificial entity, to appear, when JEFFERY STUART KATZ does not exist and is a figment of AGENT, ACTOR, GUENTHER'S, et.al. imagination?

1112. For the record, factually will the STATE OF TEXAS, the COUNTY or CITY OF DALLAS produce the documents presented to ME, Jeffrey Stuart, Katz by AGENT, ACTOR GUENTHER pursuant to

TEXAS TRANSPORTATION CODE CHAPTER 543. ARREST AND PROSECUTION OF VIOLATORS.

§ 543.005. Promise to Appear; Release

To secure release, the person arrested must make a written promise to appear in court by signing the written notice prepared by the arresting officer. The signature may be obtained on a duplicate form or on an electronic device capable of creating a copy of the signed notice. The arresting officer shall retain the paper or electronic original of the notice and deliver the copy of the notice to the person arrested. The officer shall then promptly release the person from custody.

1113. For the record, factually if the alleged plaintiffs cannot or will not produce the necessary documents are AGENT, ACTOR GUENTHER et.al. guilty, and, in violation of § 543.008. Violation by Officer?

TEXAS TRANSPORTATION CODE CHAPTER 543. ARREST AND PROSECUTION OF VIOLATORS

§ 543.008. Violation by Officer

A violation by an officer of a provision of § 543.003 – 543.007 is misconduct in office and the officer is subject to

removal from the officer's position.

1114. For the record, factually does a conflict exist when TEXAS TRANSPORTATION CODE CHAPTER § 541.001 (4) "Person" means an individual, firm, partnership, association, or corporation" when I am a living man?

1115. For the record, factually does a conflict exist when TEXAS TRANSPORTATION CODE § 541.002. (4) states, "Police officer" means an officer authorized to direct traffic or arrest persons who violate traffic regulations"?

1116. For the record, factually since AGENT, ACTOR GUENTHER, et.al. are public servants, peacekeepers, who do not grasp the intent of, "to serve and protect, my rights," does this make AGENT, ACTOR GUENTHER, et. al. dangers to themselves, public nuisances and their continued service is an endangerment to the community at large, the CITY and COUNTY of DALLAS, as well as the STATE of TEXAS?

1117. For the record, factually what is the meaning and definition of "public nuisance"?

1118. For the record, factually is it possible that AGENT, ACTOR GUENTHER, et. al. being trained, conditioned, educated, lacked good faith, and thus became frustrated, and angry when AGENT, ACTOR GUENTHER, et. al. encountered the accused?

1119. For the record, factually has AGENT, ACTOR GUENTHER, et. al. ever been hospitalized?

1120. For the record, factually does AGENT, ACTOR GUENTHER, et. al. take medication?

1121. For the record, factually is AGENT, ACTOR GUENTHER, et. al. under a doctors care?

1122. For the record, factually would it be possible to have AGENT, ACTOR GUENTHER et.al. submit to an independent doctors' evaluation for medical competency?

1123. For the record, factually how long was AGENT, ACTOR GUENTHER, et. al. on his shift the evening he chose not to have a courteous conversation with the accused?

1124. For the record, factually has AGENT, ACTOR GUENTHER, et. al. ever demonstrated anger?

1125. For the record, factually is AGENT, ACTOR GUENTHER, et. al. divorced?

1126. For the record, factually what is the education level of AGENT, ACTOR GUENTHER, et. al.?

1127. For the record, factually did the supposed Court error in Beardsley v. Maynard, 4 Wend. (N.Y.) 336, 355? "Anger is a short insanity."

1128. For the record, factually did the alleged Court correctly hold in Van Brunt v. Schenck, 11 Johns (N.Y.) 380? "An act of law shall prejudice no man."

1129. For the record, factually did the purported Court mistake in Merritt v. Welsh, 14 Otto (104 U.S.) 694, 702? "Where the law ends, tyranny begins."

1130. For the record, factually since I would not abandon my private conveyance, by what authority did AGENT, ACTOR GUENTHER, et. al. have to assault, detain and place ME in jail when Class "C" Misdemeanors are non-Jailable offenses and are not a crime?

1131. For the record, did the purported Court error when it held in Peoria Gas & Elec. Co. v. Peoria, 200 U.S. 48, 56? "Punishment adheres to the offense."

1132. For the record, factually did the purported Court error when it held in Ex parte Curtis, 106 U.S. 371, 378? "It is not lawful to do evil that good may come. There are plenty of ways in which wrong may be suppressed with resorting to wrongful measures to do it."

1133. For the record, factually did John Quincy Adams explain appropriately the following? "The moment the idea is admitted into society that property is not as sacred as the laws of G-d and there is not a force of law and public justice to protect it, anarchy, and tyranny commence".

1134. For the record, factually can YOU contradict my claim when AGENT, ACTOR GUENTHER, et. al. impounded, and proceeded to steal my private conveyance against my wishes and without consent, AGENT, ACTOR GUENTHER et. al. violated the intent of TEXAS PENAL CODE CHAPTER 39. ABUSE OF OFFICE?

TEXAS PENAL CODE CHAPTER 39. ABUSE OF OFFICE

§ 39.01. DEFINITIONS.

In this chapter:

(1) "Law relating to a public servant's office or employment" means a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly:

(A) imposes a duty on the public servant; or

(B) governs the conduct of the public servant.

(2) "Misuse" means to deal with property contrary to:

(A) an agreement under which the public servant holds the property;

(B) a contract of employment or oath of office of a public servant;

(C) a law, including provisions of the General Appropriations Act specifically relating to Govt. property, that prescribes the manner of custody or disposition of the property; or

(D) a limited purpose for which the property is delivered or received.

1135. For the record, factually can anyone contradict my claim, when AGENT, ACTOR GUENTHER et. al. impounded, and stole my private conveyance against my wishes, without consent, and chose not to take a full and complete inventory of the contents of the white Grand Cherokee AGENT, ACTOR GUENTHER et. al. this action violated the intent TEXAS PENAL CODE § 39.02. ABUSE OF OFFICIAL CAPACITY?

TEXAS PENAL CODE § 39.02. ABUSE OF OFFICIAL CAPACITY.

(a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:

(1) violates a law relating to the public servant's office or employment; or

(2) misuses Government property, services, personnel, or any other thing of value belonging to the Govt. that has come into the public servant's custody or possession by virtue of the public servant's office or employment.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor.

(c) An offense under Subsection (a)(2) is:

(4) a state jail felony if the value of the use of the thing misused is $1,500 or more but less than $20,000.

1136. For the record, factually is the burden of proof on YOU to prove beyond a reasonable doubt, by a preponderance of or by clear and convincing evidence that I am an artificial entity, a person, an individual, a corporation, a legal fiction, a driver, operating or driving a motor vehicle or passenger car within the territory, known as the CITY OF DALLAS, the COUNTY OF DALLAS, and the STATE OF TEXAS?

1137. For the record, factually is TEXAS PENAL CODE § 2.01. Proof Beyond a Reasonable Doubt as follows?

TEXAS PENAL CODE § 2.01. Proof Beyond a Reasonable Doubt

"All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that he has been arrested, confined, or indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at his trial. "

1138. For the record, factually is TEXAS PENAL CODE § 7.01. Parties to Offenses as follows?

TEXAS PENAL CODE § 7.01. Parties to Offenses

(a) "A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both.

(b) Each party to an offense may be charged with commission of the offense.

(c) All traditional distinctions between accomplices and principals are abolished by this section, and each party to an offense may be charged and convicted without alleging that he acted as a principal or accomplice."

1139. For the record, what is the intent of TEXAS PENAL CODE § 7.02. Criminal Responsibility for Conduct of Another?

TEXAS PENAL CODE § 7.02. Criminal Responsibility for Conduct of Another

(2) acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense; or

(3) having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense.

(b) If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.

1140. For the record, factually what is the intent of TEXAS PENAL CODE § 7.03. Defenses Excluded?

TEXAS PENAL CODE § 7.03. Defenses Excluded

In a prosecution in which an actor's criminal responsibility is based on the conduct of another, the actor may be convicted on proof of commission of the offense and that he was a party to its commission, and it is no defense:

(1) that the actor belongs to a class of persons that by definition of the offense is legally incapable of committing the offense in an individual capacity; or

(2) that the person for whose conduct the actor is criminally responsible has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

1141. For the record, factually are the STATE OF TEXAS, the COUNTY OF DALLAS and the CITY OF DALLAS corporations?

1142. For the record, factually are corporations real or artificial entities created, or imagined by delusional attorneys at law, and their BAR ASSOCIATIONS?

1143. For the record, factually what "is real"?

1144. For the record, factually can YOU, as an ASST. CITY ATTORNEY provide factual evidence that I am in STATE OF TEXAS, the COUNTY OF DALLAS, and the CITY OF DALLAS.

1145. For the record, factually can YOU, as ASST. CITY ATTORNEY provide the factual history of the alleged STATE OF TEXAS?

1146. For the record, factually can YOU, as an ASST. CITY ATTORNEY provide the treaty between the United States of America and the Republic of Texas?

1147. For the record, factually can YOU, as an ASST. CITY ATTORNEY provide the treaty between the united States of America and the Republic of Texas?

1148. For the record, factually can YOU, as an ASST. CITY ATTORNEY provide the information that proves the alleged Treaty was ratified with the proper and necessary votes by the U.S. Senate?

1149. For the record, factually if a treaty does not exist between the Republic of Texas and the UNITED STATES or

other derivatives, why are government AGENTS and ACTORS here on the land and or sea?

1150. For the record, factually since the Treaty does not exist and the annexation was fraudulent, what is the stated purpose of these alleged government AGENTS and or ACTORS?

1151. For the record, factually what the meaning and definition of "the united States of America"?

1152. For the record, factually what the meaning and definition of "the united states of America"?

1153. For the record, factually what the meaning and definition of "the United States of America"?

1154. For the record, factually what the meaning and definition of "UNITED STATES"?

1155. For the record, factually what the meaning and definition of "United States"?

1156. For the record, did the alleged Court mistake when it held in Hooven & Allison Co. v. Evatt, 324 US 652 (1945)? "The term 'United States' may be used in any one of several senses. It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in the family of nations. It may designate the territory over which the sovereignty of the United States extends, or it may be the collective name of the states which are united by & under the Constitution."

1157. For the record, factually what is the difference between the united States of America and the UNITED STATES?

1158. For the record, factually what is the difference between the United States of America and UNITED STATES?

1159. For the record, factually what is the difference between the united States of America and the United States of America?

1160. For the record, factually what is the meaning and definition of the "State of Texas"?

1161. For the record, factually what is the meaning and definition of the "STATE OF TEXAS"?

1162. For the record, factually what is the difference(s) between the State of Texas and the STATE OF TEXAS?

1163. For the record, factually what is the meaning and definition of "annexation"?

1164. For the record, factually why did U.S. Pres. Polk annex the Republic of Texas, if a treaty existed?

1165. For the record, factually was U.S. Pres. Polk's motivation the expansion of the UNITED STATES?

1166. For the record, factually was U.S. Pres. Polk's annexation a lawful or unlawful action?

1167. For the record, factually was the annexation of the Republic of Texas motivated by the sinking of the U.S. Central America off the Eastern seaboard, while carrying the gold from the California gold rush?

1168. For the record, factually did the sinking of the U.S. Central America (a)effect the U.S. Treasury and the stability of the U.S. Government?

1169. For the record, factually during this period of American and Texan history were the transatlantic railroads completed?

1170. For the record, factually pursuant to the Law of Nations, when two countries enter into an agreement, is a treaty created?

1171. For the record, factually what is the meaning and definition of "subject, matter, jurisdiction"?

1172. For the record, factually what is the meaning and definition of "personam jurisdiction"?

1173. For the record, factually how does an alleged JUDGE of a Court of law achieve "subject, matter, jurisdiction"?

1174. For the record, factually is it a violation of the law for a Court to proceed without attaining "subject, matter, jurisdiction"?

1175. For the record, factually what is the meaning and definition "void judgement"?

1176. For the record, factually can YOU, as an ASST. CITY ATTORNEY provide the specific legislative act, which created the alleged MUNICIPAL COURT OF DALLAS.

1177. For the record, factually can YOU, as an ASST. CITY ATTORNEY provide the specific legislative act, which grants alleged JUDGE C. VICTOR LANDER the authority to convene the MUNICIPAL COURT OF THE CITY OF DALLAS?

1178. For the record, factually is the MUNICIPAL COURT OF THE CITY OF DALLAS a Court of Record?

1179. For the record, factually if the MUNICIPAL COURT OF THE CITY OF DALLAS is not a Court of Record, what is the alleged Courts purpose and function?

1180. For the record, factually is the Dallas County Constitutional Court open for the sovereign, inhabitants of the land and or sea?

1181. For the record, factually are All Courts open in the State of Texas?

1182. For the record, factually is the Constitution of the United States and the 1836 Constitution of the Republic of Texas employed by the MUNICIPAL COURT OF THE CITY OF DALLAS?

1183. For the record, factually verify the time, date and location of the arraignment that took place prior to the June 15, 2004 c.e. alleged hearing in purported MUNICIPAL COURT 7 OF DALLAS at 1:30 pm titled STATE OF TEXAS, CITY OF DALLAS, COUNTY OF DALLAS vs. JEFFERY STUART KATZ?

1184. For the record, factually who presided in the alleged arraignment and or hearing?

1185. For the record, factually can YOU provide the documentary verification of my receipt of the document entitled "NOTICE OF ARRAIGNMENT" and my participation therein pursuant to question 1156.

1186. For the record, factually can YOU provide the documentary evidence and verification that during or prior to the alleged Arraignment I was read my rights pursuant to the due process of the law?

1187. For the record, factually did the Court, error in Gibbons v. Ogden, 9 Wheat. 1, 189-190 (1824)? "Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse."

1188. For the record, factually what specific legislative act authorizes the STATE OF TEXAS, the COUNTY OF DALLAS, as well as the CITY OF DALLAS to regulate anyone NOT engaged in commerce and trade on the streets and highways?

1189. For the record, factually if such a legislative act exists, what was the enabling clause and enacting date?

1190. For the record, factually does the STATE OF TEXAS, the COUNTY OF DALLAS, or the CITY OF DALLAS require anyone to have and carry a TEXAS DRIVER LICENSE who is not engaged in commerce and trade upon the streets and highways?

1191. For the record, factually will YOU provide the "Reciprocity Agreement" between the STATE OF TEXAS et. al. that regulates "traffic" engaged in commerce and trade upon the streets, and highways?

1192. For the record, factually what specific legislative act(s), requires ME, Jeffrey Stuart, Katz et. al. to have and or carry a STATE OF TEXAS issued identification card?

1193. For the record, factually does the alleged complaint, violation or statute(s) that were violated arise under the common law, due to harm or damage of property?

1194. For the record, factually does the alleged complaint, violation or statute(s) arise under the jurisdiction of the STATE OF TEXAS, et. al. over corporations, artificial entities engaged in commerce and trade within the state?

1195. For the record, factually does the alleged complaint, violation or statute(s) arise under the STATE OF TEXAS jurisdiction over interstate commerce under admiralty law?

1196. For the record, factually does the alleged statute(s) arise under the jurisdiction over martial rule or law?

1197. For the record, factually did alleged JUDGE C. VICTOR LANDER take an oath to be fair, just and impartial?

1198. For the record, factually did YOU, as ASST. CITY ATTORNEY swear or affirm an oath to uphold the Constitution(s) of Texas and the United States?

1199. For the record, factually do YOU intend to process this case according to the Constitution(s)?"

1200. For the record, factually did YOU swear yourself in at the alleged hearing June 15, 2004 c.e. in the MUNICIPAL COURT 7 of DALLAS?

1201. For the record, factually will alleged JUDGE C. VICTOR LANDER provide in affidavit form, the nature and authority of the DALLAS MUNICPAL COURT?

1202. For the record, factually does any part of the alleged fine go into the alleged judge's pension fund?

1203. For the record, factually how is it possible for ME, to participate in an alleged hearing when I am not trained or speak "legalese"?

1204. For the record, factually does 12 USC § 152 define lawful money of the United States to be "... the terms "lawful money" and "lawful money of the United States" shall be construed to mean gold or silver coin of the United States...?

1205. For the record, factually, are Federal Reserve Notes legal tender?

1206. For the record, factually is it possible for Federal Reserve Notes to be the lawful money of the U.S., when Federal Reserve Notes are redeemable for lawful money?

1207. For the record, factually was the alleged Court correct in Bronson v. Rhodes, 74 U.S. 229, 247, 19 L. Ed. 141? "Lawful Money of the United States could only be gold and silver coin or that which by law is made its equivalent so as to be exchangeable therefor at par, and on demand, and does NOT include a currency which though nominally exchangeable for coin at its face value, is not redeemable on demand."

1208. For the record, factually since Federal Reserve Notes (FRNs) are evidence of debt, can YOU be free of debt, when All YOU have is debt?

1209. For the record, factually are YOU consequently, in debtor's prison, which is against the law, since FRNs are debt instruments?

1210. For the record, factually how is it possible to satisfy the MUNICIPAL COURT OF DALLAS when "a party becomes bound to pay money to the State, and all fines ... shall be collected in the lawful money of the United States only", pursuant to TCCrP 43.02, which I do not have and do not expect to have anytime soon?

1211. For the record, factually what is the stated purpose of the MUNICIPAL COURTS OF DALLAS, since it is obvious that cannot lawfully accept Federal Reserve Notes as payment of a fine?

1212. For the record, factually in "The Federal Reserve System - Purpose & Functions" 8th Edition P. 135, are Federal Reserve notes defined as follows?

"Currency issued by the Federal Reserve. Nearly all of the nation's circulating currency is in the form of Federal Reserve notes, which are printed by the Bureau of Engraving and Printing, a part of the U.S. Dept. of the Treasury. Federal Reserve notes are, by law, obligations of the U.S. government."

1213. For the record, factually are YOU familiar with 18 USC § 8. Obligation or other security of the United States defined, which states the following?

18 USC § 8. Obligation or other security of the United States

"The term "obligation or other security of the United States" includes all bonds, certificates of indebtedness, national bank currency, Federal Reserve notes, Federal Reserve bank notes, coupons, United States notes,

Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the United States, stamps and other representatives of value, of whatever denomination, issued under any Act of Congress, and canceled United States stamps"?

1214. For the record, factually in "The Federal Reserve System - Purpose & Functions" 8th Edition on P. 113 – in Appendix A – were YOU aware that the statutory price of gold is $42.22 an oz.?

Federal Reserve Balance and Reserve Equation

CONSOLIDATED BALANCE SHEET

Major Asset Account

The GOLD CERTIFICATE ACCOUNT (item 1 in the table) comprises certificates that are issued to the Federal Reserve by the Treasury backed by gold held by the Treasury. In return, the Reserve Banks issue an equal value of credits to the Treasury deposit account (item 9b), computed at the statutory price of $42.22 per fine troy ounce. Through such transactions, the Treasury "monetizes" the gold. Because all gold held by the Treasury as of the date of the table has been monetized, the Federal Reserve Banks' gold certificate account of $11.1 billion represents the nations entire official gold stock. New gold certificate credit may be issued only if the Treasury acquires additional gold or if the statutory price of gold is increased. If the gold stock is reduced, the Treasury must redeem an equal value of gold certificates from the Federal Reserve in exchange for a reduced Treasury deposit at the Federal Reserve.

1215. For the record, factually since the entire value of the U.S. gold stock is $11.1B based on $42.22 oz. then the number of ounces of gold held by the Federal Reserve is approximately 260,540,028 oz., which means at a current price of $ 413.00 oz the actual value of the entire U.S. gold stock is $107,603,031,564.

How would this certainty impact the U.S. National Debt, and the lives of Americans and Texans?

1216. For the record, factually is the "unofficial purpose and intent" of the MUNICIPAL COURT OF DALLAS to oppress, harm and traumatize WE the People into accepting the authority and rule of a tyrannical, out of control corporation masquerading as government, utilizing mercenaries and or hired guns to enforce private statutory law?

1217. For the record, factually does the DALLAS POLICE DEPT., the CITY OF DALLAS, the COUNTY OF DALLAS, and the STATE OF TEXAS routinely oppress, harm and traumatize WE the People?

1218. For the record, factually who gains or profits by WE the People not being educated in the law?

1219. For the record, factually did the alleged Court mistake in Lavin v. Marsh, 644 F.2nd 1378, 9th Cir., (1981)? "Persons dealing with government are charged with knowing government statutes and regulations, and they assume the risk that government agents may exceed their authority & provide misinformation"

1220. For the record, factually did the alleged Court mistake in Bollow v. Federal Reserve Bank of San Francisco, 650 F.2d 1093, 9th Cir., (1981)?

"All persons in the United States are chargeable with knowledge of the Statutes-at-Large.... It is well established that anyone who deals with the government assumes the risk that the agent acting in the government's behalf has exceeded the bounds of his authority"

1221. For the record, can YOU contradict my claim that AGENT, ACTOR GUENTHER'S et. al. actions rise to "Official Oppression" (O O) when the intent of TPC § 39.03 OFFICIAL OPPRESSION was blatantly violated?

TEXAS PENAL CODE § 39.03 OFFICIAL OPPRESSION

(a) A public servant acting under color of his office or employment commits an offense if he:

(1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession,

assessment, or lien that he knows is unlawful;

(2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful; or

(b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

(d) An offense under this section is a Class A misdemeanor.

1222. For the record, factually what other conundrums are the STATE OF TEXAS, et. al. concealing from WE the People?

1223. For the record, factually are these the lawful actions of a de jure, legitimate government, that was created by WE the People, to serve and protect, All of OUR rights as described in the 1836 Declaration of Rights, or are these actions proof that the STATE OF TEXAS is a defacto, rogue corporate state, which bullies, batters, terrorizes its' citizenry in an attempt to subdue WE the People, and accept their unlawful, tyrannical authority and control?

1224. For the record, factually who gains and who loses from this government sanctioned official oppression (O O) of WE the People?

1225. For the record, factually what is the AMERICAN INNS OF COURTS?

1226. For the record, factually who are members of the AMERICAN INNS OF COURTS?

1227. For the record, factually is it possible for alleged judges to be fair and impartial, or does a conflict of interest exist due to the fact, that attorneys at law, regularly donate funds to the judges' reelection campaigns?

1228. For the record, factually does the AMERICAN INNS OF COURTS demonstrate that a conflict of interest exists, since third year law students regularly fraternize with purported Supreme Court Justices?

1229. For the record, factually what is the shared interest of the AMERICAN INNS OF COURTS and the INNS OF COURTS in the City of London?

1230. For the record, factually in the MUNICIPAL COURT OF DALLAS is a railing or bar in place to enclose a space, which is occupied by legal counsel, as well as the accused and civil litigants who may have business pending before the alleged court?

1231. For the record, factually what is the AMERICAN BAR ASSOCIATION?

1232. For the record, factually what is the STATE BAR OF TEXAS?

1233. For the record, factually what is the TEXAS BAR ASSOCIATION?

1234. For the record, factually what is the DALLAS BAR ASSOCIATION?

1235. For the record, factually how does one become a member of the BAR ASSOCIATION?

1236. For the record, factually do YOU pay an initiation fee, membership dues or both?

1237. For the record, factually who may join a BAR ASSOCIATION?

1238. For the record, factually what is the qualifications of the members of the BAR ASSOCIATIONS?

1239. For the record, factually do YOU as ASST. CITY ATTORNEY have a State Bar Card and number?

1240. For the record, factually how long have YOU had the State Bar Card and Number?

1241. For the record, factually do alleged MUNICIPAL COURT JUDGES have a State Bar Cards and Numbers?

1242. For the record, factually does alleged JUDGE VICTOR C. LANDER possess a State Bar Card and Number?

1243. For the record, factually does the alleged licensed number issued by the STATE BAR OF TEXAS conclusive evidence of a Title of Nobility, which is prohibited by Article 1, § 10, Clause 1, in the organic U.S. Constitution, also by the original 13th Amendment (1819) and the 1836 Texas Constitution, the Declaration of Rights – "All men

when they form a social compact, have equal rights, and no men or set of men are entitled to exclusive public privileges or emoluments from the community..."?

1244. For the record, factually did the purported Court correctly hold in Horst v. Moses, 48 Ala. 123, 142 (1872)? "to confer a title of nobility, is to nominate to an order of persons to whom privileges are granted at the expense of the rest of the people. It is not necessarily hereditary, and the objection to it arises more from the privileges supposed to be attached, than to the otherwise empty title or order. These components are forbidden separately in the terms "privilege", "honor", and "emoluments", as they are collectively in the term "title of nobility". The prohibition is not affected by any consideration paid or rendered for the grant."

1245. For the record, factually when Paul Revere road through the night sounding the alarm, "The British are Coming", does the omission of Article XIII of the U.S. Constitution confirm, "The British are HERE"?

1246. For the record, factually do attorneys at law present a clear and present danger to We the People?

1247. For the record, factually what is the significance of Queen Elizabeth of England knighting the Mayor of NYC, Rudy Giuliani and giving him the title of "Knight Commander of the Most Excellent Order of the British Empire", which allows the mayor to put the initials K.B.E. after his name?

1248. For the record, factually does it seem odd to YOU that Queen Elizabeth of England bestowed the honorary title of "Commander of the Most Excellent Order of the British Empire" - on NYC Police Commissioner Bernard Kerik and the NYC Fire Commissioner Thomas Von Essen for their service after the World Trade Center attack?

1249. For the record, factually can you dispute that former Pres. Bush, Pres. Reagan, comedian Bob Hope, General Colin Powell, General Norman Schwarzkopf, conductor Andre Previn, film director Steven Spielberg, rock super stars Elton John, Paul McCartney, and Mick Jagger were knighted by the Queen Elizabeth of England?

1250. For the record, factually is it possible to be responsible and loyal to WE the People of the united States of America and or the Republic of Texas when YOU have accepted a Title of Nobility from a foreign sovereign power?

1251. For the record, factually is accepting a Title of Nobility from a foreign power evidence of sedition and treason, if it is witnessed by 2 or more?

1252. For the record, factually are most alleged judges, and attorneys ESQUIRES, therefore THEY are loyal British subjects?

1253. For the record, factually by accepting a Title of Nobility does this prove a conflict of interest exists?

1254. For the record, factually are these intentional actions, proof of treason and sedition by (wo) men who accepted offices of public trust, affirmed by Oath, to uphold and protect the Constitution(s) of the United States of America, the several states, as well as the Republic of Texas?

1255. For the record, factually is the following statement by Marcus Tullius, Cicero (106 - 42 BC) still valid today? "A nation can survive its fools and even the ambitious. But it cannot survive treason from within. An enemy at the gates is less formidable, for he is known and he carries his banners openly. But the traitor moves among those within the gates freely, his sly whispers rustling through all the alleys, heard in the very halls of govt. itself. For the traitor appears not traitor: He speaks in the accents familiar to his victims and he wears their face and their garments and he appeals to the baseness that lies deep in the hearts of all men. He rots the soul of a nation. He works secretly and unknown in the night to undermine the pillars of a city; he infects the body politic so that it can no longer resist. A murderer is less to be feared".

1256. For the record, factually did Abraham Lincoln speak the truth when he said the following?

"America will never be destroyed from the outside. If we falter, and lose our freedoms, it will be because we destroyed ourselves."

1257. For the record, factually what is the meaning and definition of "malpractice insurance"?

1258. For the record, do YOU carry malpractice insurance?

1259. For the record if YOU carry malpractice insurance provide a copy of your policy, the name of the carrier and the policy number.

1260. For the record, factually do YOU or any member of your trade association have a financial interest of any kind whatsoever, in the proceeding before this alleged court? If so, explain in writing any potential conflict of interest that may exist.

1261. For the record, factually what is the meaning and definition of "financial interest"?

1262. For the record, factually are YOU a foreign registered agent of any kind, by association or practice?

1263. For the record, factually what is YOUR foreign registration number?

1264. For the record, factually what is the meaning, the purpose of the "foreign registration number"?

1265. For the record, factually is their a penalty if YOU, et. al. do not have a foreign registration number?

1266. For the record, factually is it possible to find an attorney who does not have a "Conflict of Interest" since he has sworn an "Oath" to support my adversary (corporate fictions)?

1267. For the record, factually what is the meaning and definition of "conflict of interest"?

1268. For the record, factually is it possible to find an attorney that is not an "Esquire", since I am concerned that I may be charged criminally with conspiring, and acting in collusion with an unregistered foreign paid AGENT(S) and there is NO way of knowing how many laws THEY may break?

1269. For the record, factually is "ignorance of the law a valid excuse"?

1270. For the record, factually what is the importance or significance of a name?

1271. For the record, factually is your name how YOU are addressed?

1272. For the record, factually when the name on a document is not yours, is the document addressed to someone other than YOU?

1273. For the record, factually is a name, an address?

1274. For the record, factually is the address JEFFREY KATZ, the same address as JEFFERY KATZ?

1275. For the record, factually is the address JEFFREY STUART KATZ, the same address as JEFFERY STUART KATZ?

1276. For the record, factually how does the dead, legal fiction, JEFFERY KATZ et. al. achieve parity with ME, the living man, Jeffrey Stuart, Katz?

1277. For the record, did the alleged Court fail in Penhallow v. Doane's Administraters. (3 U.S. 54; 1 L.Ed. 57; 3 Dall. 54)? "Inasmuch as every government is an artificial person, an abstraction, and a creature of the mind only, a government can interface only with other artificial persons. The imaginary, having neither actuality nor substance, is foreclosed from creating and attaining parity with the tangible. The legal manifestation of this is that no government, as well as any law, agency, aspect, court, etc. can concern itself with anything other than corporate, artificial persons and the contracts between them." I, Jeffrey Stuart, Katz am sovereign and enjoy "EQUAL FOOTING" with other sovereigns, not FICTIONS.

1278. For the record, factually did the purported Courts error in Bennehan v. Webb, 6 Ired. (N.C.) 57, 61; and U.S. v. Wilkinson, 12 How. (53 U.S.) 246, 253?

"The law is the same respecting things which do not appear and those which do not exist."

1279. For the record, factually what is the meaning and definition of a "legal fiction"?

1280. For the record, factually what is the meaning and definition of an "artificial entity"?

1281. For the record, factually what is the meaning and definition of "nom degerre"?

1282. For the record, factually what is the meaning and definition of "idem sonas"?

1283. For the record, factually did the purported Court fail in Cincinnati R.R. v. Kentucky, 115 U.S. 321, 337? "Calling things by the same name does not obliterate the differences between them."

1284. For the record, factually did the supposed Court mistake in State v. Evjue, 33 N.W.2d. 305, 309? "Identity of a thing means the sameness in all that constitutes the objective reality of a thing."

1285. For the record, factually did the purported Court error when it held in Gordon v. Gordon, 59 So.2d 40, 44? "Identity ordinarily connotes exactness."

1286. For the record, factually are the STATE OF TEXAS, the COUNTY OF DALLAS, the CITY OF DALLAS legal fiction(s)?

1287. For the record, factually can YOU as ASST. CITY ATTORNEY prove the existence of the STATE OF TEXAS, the COUNTY OF DALLAS, and the CITY OF DALLAS?

1288. For the record, factually is it possible for a legal fiction to have or gain parity with the tangible or the real?

1289. For the record, factually how is it possible for something that does not exist to be real?

1290. For the record, factually since "I have the right to remain silent and anything I say can be used against me," how is it possible to participate in this alleged hearing?

1291. For the record, factually does alleged JUDGE C. VICTOR LANDER hold the full judicial power of the STATE OF TEXAS or is his power derived from military rule of the Executive branch of the U.S. Government, due to the bankruptcy of the UNITED STATES and the STATE OF TEXAS?"

1292. For the record, factually is alleged Pres. George Bush administering the bankruptcy of the UNITED STATES?

1293. For the record, factually is the bankruptcy of the U.S. the reason why the presidency is described as the Administration?

1294. For the record, factually is alleged Governor Perry administering the bankruptcy of the STATE OF TEXAS or the State of Texas?

1295. For the record, factually what are the conditions of the bankruptcy of the UNITED STATES or the United States?

1296. For the record, factually what are the conditions of the bankruptcy of the STATE OF TEXAS or the State of Texas?

1297. For the record, factually what is the state of Texas?

1298. For the record, factually what is the state TEXAS?

1299. For the record, factually is this the first time the UNITED STATES or the United States of America, et. al. have been bankrupt?

1300. For the record, factually was the bankruptcy of the UNITED STATES or the United States of America, et. al. voluntary?

1301. For the record, factually as part of the bankruptcy of the U.S. were the "Great Registers" confiscated and all property used as collateral so the U.S. could use Federal Reserve Notes as a medium of exchange?

1302. For the record, factually is an affidavit available that alleged JUDGE C. VICTOR LANDER has NO bias, NO conflict of interest, NO interest in the outcome of the case(s) and is NOT vindictive, impatient or discourteous?

1303. For the record, factually as a Officer of the Court, will YOU sign a contract that guarantees that YOU will protect All my Constitutional rights, as described in the 1836 Declaration of Rights?

1304. For the record, factually have YOU as an Officer of the Court, taken an Oath to uphold the laws of the United States, as well as the State of Texas, et.al.?

1305. For the record, factually do YOU or anyone YOU know have a claim against ME, Jeffrey Stuart, Katz? If so, I demand the order to be released to me for my inspection.

1306. For the record, factually pursuant to Gideon v. Wainright, 372 U.S. 335 is it possible to get a fair, impartial hearing, when I am, unable, incapable and unqualified to defend myself and I cannot find a competent attorney due to conflict of interest?

1307. For the record, factually since I do not understand or volunteer how is it possible for ME, Jeffrey Stuart, Katz to make a legal determination on what YOU are asking me to do, as I was not purposefully, intentionally NOT trained in the law by the public school system?

1308. For the record, factually did Josef Stalin speak the truth when he said the following?
"Education is a weapon, whose effect depends on who holds it in his hands and at whom it is aimed."

1309. For the record, factually do YOU take comfort in Pres. Bush's comment on Sept. 21, 1997?
"We're going to have the best educated American people in the world".

1310. For the record, factually is Rudyard Kipling's view on Common Sense important to comprehend?
"Common sense is very uncommon. Common sense is in spite of, not as a result of education. Common sense is instinct, and enough is genius. Nothing is more fairly distributed than common sense: no one thinks he need more of it than he already has. Common sense is the knack of seeing things as they are, and doing things as they ought to be done."

1311. For the record, factually if the alleged witness is incompetent, will the evidence be inadmissible as evidence?

1312. For the record, factually will YOU provide documentary evidence that YOU represent the STATE OF TEXAS, the CITY OF DALLAS and the COUNTY OF DALLAS?

1313. For the record, factually are YOU perpetrating a fraud on the Court when YOU attempt to represent something that doesn't exist?

1314. For the record, factually since the MUNICIPAL COURT OF DALLAS, the CITY OF DALLAS, the COUNTY OF DALLAS, and the STATE OF TEXAS are obviously committing crimes against WE the People, provide the statute, and the implementing regulation, and or code, which requires ME to participate in crimes against my will?

1315. For the record, factually can YOU controvert the following regarding the American Flag of Peace?
Pursuant to 4 USC § 1, § 2 the American Flag of Peace of the united States of America described as red, white and blue, with 13 alternating red and white horizontal stripes, and a blue field (union) with 50 stars, 1 to represent each of the several States. The Flag is proportional, (1 X 1.9). This proportion is easily determined by measuring the length (fly) and dividing by measurement of the width (hoist). The length divided by the width should be very nearly 1.9. If the flag is not to the correct 1 X 1.9 proportion, it is not an official Title 4 U.S.C. § 1, § 2 American Flag of Peace of the united States of America.

1316. For the record, factually did Pres. Dwight David Eisenhower, by Executive Order No.10834, signed on Aug. 21, 1959 and printed in the Federal Register at 24 F.R. 6865, pursuant to law, state that: "A military flag is a flag that resembles the regular flag of the United States, except that it has a yellow fringe border on 3 sides."?

1317. For the record, factually do YOU agree with George W. Bush's comments before the presidential election?

"I told all (4) four that there were going to be sometimes where we don't agree with each other. But that's OK. If this were a dictatorship, it'd be a heck of a lot easier, just so long as I'm the dictator".

1318. For the record, factually what is the significance of the 4-color military flag masquerading as the American Flag of Peace in the Courtrooms of the MUNICIPAL COURT of the CITY OF DALLAS?

1319. For the record, factually is the alleged judge sitting under a gold or yellow fringe flag the "Captain" or "Master" of that ship or enclave and has absolute power to make the rules as he goes, consequently YOU are under martial law, and YOU are presumed guilty until YOU prove YOUR innocence?

1320. For the record, factually is the gold or yellow fringe flag a warning that you are leaving your Constitutionally secured RIGHTS outside the door to that courtroom?

1321. For the record, factually is this one reason why so many judges are appointed, and not elected by the people? The Federal judges are appointed by the President, the national military commander in chief. The State judges are appointed by the Governors, the state military commanders. The judges are appointed because the courts are military courts and civilians do not "elect" military officers.

1322. For the record did the alleged Court fail in Ruhstrat v. People, 57 N.E. 41, 45, 185 ILL. 133, 49 LRA 181, 76 AM? "Pursuant to the "Law of the Flag", a military flag does result in jurisdictional implication when flown. The Plaintiff cites the following: "Under what is called international law, the law of the flag, a ship owner who sends his vessel into a foreign port gives notice by his flag to all who enter into contracts with the shipmaster that he intends the law of the flag to regulate those contracts with the shipmaster that he either submit to its operation or not contract with him or his agent at all."

1323. For the record, factually what is the significance of a gold-fringed flag on the television show JUDGE JUDY?

1324. For the record, factually do YOU agree with George W. Bush when he said the following?
"Our enemies are innovative and resourceful and so are we. They never stop thinking about new ways to harm our country and our people, and neither do we."

1325. For the record, factually did the purported Court error when it held in Girty v. Logan, 6 Bush KY, 8? "It is an elementary rule of pleading, that a plea to the jurisdiction is a tacit (silent) admission that the court has a right to judge the case and is a waiver to all exception to the jurisdiction."

1326. For the record, factually can YOU dispute the statement?
If the gold-fringed flag is considered a frivolous or a meritless argument, then the alleged JUDGE could remove the gold fringed flag from the Courtroom, otherwise it is NOT a frivolous, argument and in actuality the gold–fringed is essential to the JUDGES disguise, and deception since, Constitutional rights are not available and by these very actions prove the MUNICIPAL COURT of DALLAS is operated under military rule and this alleged hearing, is a sham, and is certainly not a Court of justice or record, but rather a court marshal, or a lynching, which, I choose NOT to participate in because justice cannot be served and I do not belong in such a place, where my G-d given unalienable rights are not valid or upheld.

1327. For the record, factually did U.S. Congress on July 20, 1956, proclaim that the national motto of the United States is 'In G-d We Trust', and that motto is inscribed above the main door of the Senate, behind the Chair of the Speaker of the House of Representatives, and on the currency of the United States?

1328. For the record, factually did the purported Court mistake when it held in Sherman v. Community Consolidated School District 21, 980 F.2d 437 (7th Cir. 1992)?
"A school district's policy for voluntary recitation of the Pledge of Allegiance including the words 'under G-d' was

constitutional."

1329. For the record, factually Is JUDGE C. VICTOR LANDER and other AGENTS and or ACTORS representing the fictitious plaintiff willing participants in an obstruction of justice proceeding or scheme?

1330. For the record, factually what is the meaning and definition of "obstruction of justice"?

1331. For the record, factually if alleged JUDGE C. VICTOR LANDER cannot hold an impartial, unbiased hearing should alleged JUDGE C. VICTOR LANDER recluse himself in accordance of the due process of the law?

1332. For the record, factually if alleged JUDGE C. VICTOR LANDER is a Mason and, as such, has sworn an oath in direct opposition to his oath as alleged JUDGE of the MUNICIPAL COURT OF DALLAS, pursuant to the TEXAS'S Cannon of Judicial Ethics, should alleged JUDGE C. VICTOR LANDER recuse himself?

1333. For the record, in BORN IN BLOOD – THE LOST SECRETS OF FREEMASONRY by John J. Robinson, (1969), Library of Congress Cat. No. ISBN 0-87131-602-1 on p. 206 – 207 is the first Masonic Oath, as follows?

"I _____, of my own free will and accord, in the presence of Almighty God, and this Worshipful Lodge erected to Him and dedicated to the holy Saints John, do hereby and hereon most sincerely promise and swear that I will always *hail*, ever conceal and never reveal, any of the arts, parts, or points of the hidden mysteries of ancient Free Masonry which may have been, or hereafter shall be, at the time, or any future period, communicated to me as such, to any person or persons whomever, except it be to a true and lawful brother Mason, or in a regularly constituted lodge of Masons; nor unto him or them until by strict trial, due examination, or lawful information I shall have found him, or them, as lawfully entitled to the same as I am myself. I furthermore promise and swear that I will not print, paint, stamp, stain, cut, carve, mark or engrave them, to cause the same to be done on anything movable or immovable, capable of receiving the least impression of a word, syllable, letter, or character, whereby the same may become legible or intelligible to any person under the canopy of heaven, and the secrets of Masonry thereby lawfully obtained though my unworthiness.

All this I most solemnly, sincerely promise and swear, with a firm and steadfast resolution to perform the same, without any mental reservation or secret evasion of mind whatever, binding myself under no less penalty than that of having my throat cut across, my tongue torn out by its root, and my body buried in the rough sands of the sea, at low-water mark, where the tide ebbs and flows twice in 24 hrs. should I ever knowingly violate this my Entered Apprentice obligation. So help me God, and keep me steadfast in the due performance of the same,"

1334. For the record, factually can YOU describe the "Great Hailing Sign of Distress " of the Master Mason?

1335. For the record, factually did the alleged Courts error in Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (1958); U.S. v. Will, 449 U.S. 200, 216, 101 S. Ct. 471, 66 L. Ed. 2d 392, 406 (1980); Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404, 5 L. Ed 257 (1821)?

"No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it".

1336. For the record, factually did the purported Court mistake in Louisville RR v. Motley, 211 US 149, 29 S.Ct. 42?

"If any tribunal (court) finds absence of proof of jurisdiction over person and subject matter, the case must be dismissed."

1337. For the record, did the alleged Court error in Little v. U.S. Fidelity & Guaranty Co., 217 Miss 576, 64 So 2d 697?

"When a judicial officer acts entirely without jurisdiction or without compliance with jurisdictional requisites, he may be held civilly liable for abuse of process even though his act involved a decision made in good faith, that he had jurisdiction."?

1338. For the record, factually did the alleged Court error in Dean v. Kochendorfer, 237 NY 384, 143 NE 229?

"If a magistrate instigates a prosecution before himself without probable cause and deliberately uses the process issue by him therein, not for the legitimate purpose of hearing the case, but to show his authority and to gratify his personal feelings of importance, the act savors of oppression and constitutes an illegal abuse of power."

1339. For the record, factually did the supposed Court error in Davis v. Burris, 51 Ariz. 220, 75 P.2d 689 (1938)?

"A judge must be acting within his jurisdiction as to subject matter and person, to be entitled to immunity from civil action for his acts."

1340. For the record, factually did the alleged Court mistake in Gregory v. Thompson, F.2d 59 (C.A. Ariz. 1974)?

"Generally, judges are immune from suit for judicial acts within or in excess of their jurisdiction even if those acts have been done maliciously or corruptly; the only exception being for acts done in the clear absence of all jurisdiction."

1341. For the record did the purported Court error in Scheuer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974)?

"When a state officer acts under a state law in a manner violative of the Federal Constitution, he comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States."

Note: By law, a judge is a state officer. The judge then acts not as a judge, but as a private individual (in his own person). When a judge acts as a trespasser of the law, and does not follow the law, the Judge loses subject, matter, jurisdiction and the judges' orders are not voidable, but VOID, and of no legal force or effect.

1342. For the record did the alleged Court fail in U.S. v. Lee, 106 U.S. 196, 220 1 S. Ct. 240, 261, 27 L. Ed 171 (1882)?

"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it."

"It is the only supreme power in our system of government, and every man who, by accepting office participates in its' functions, is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes on the exercise of the authority which it gives."

1343. For the record, factually in re Hammermaster, 985 F/2d 924, 139 Wn.2d 211, 235 (1999), did the majority error in the following opinion?

"For most citizens, appearing as witnesses, spectators, or defendants in municipal court is their only contact with the judicial system.... The impressions which individuals involved in court proceedings receive help form their opinion of our justice system.... [footnote omitted].... People appearing pro se and without legal training are the ones least able to defend themselves against rude, intimidating, or incompetent judges. The conduct here denigrates the public view of municipal courts as places of justice. [citation omitted.]"

1344. For the record, factually did the alleged Court error when it held in South Carolina v. U.S., 199 U.S. 437, 448?

"The constitution is a written instrument; as such, its meaning does not alter. That which it meant when it was adopted, it means now."

1345. For the record, factually did the alleged Court error in P.E.P. Co. v. State Highway Commission, 294 U.S. 613?

"Police power must be exercised in subordination to the provisions of the U.S. Constitution of America."

1346. For the record, can YOU as ASST. CITY ATTORNEY provide the prison records of the alleged DEFENDANT, since I was held in LEW STERRETT DENTENTION CENTER against my will for several days and nights?

1347. For the record, factually can YOU provide All written, statements, originals, or copies, identifiable as reports of or made by COUNTY OF DALLAS, prison and civilian employees, including All medical reports, interdepartmental memoranda, as well as All rules, regulations and policy statements or directives?

1348. For the record, factually did the Texas Attorney General fail in ORD-1633 (1997); as well as, the alleged Court error in the holding in the City of Lubbock v. Cornyn, 993 S.W.2d 461, 465-66 (Tex. App. - Austin 1999, no pet.)? "Police dispatch reports are public information that must be released."

1349. For the record, did the alleged Court mistake in the City of San Antonio v. San Antonio Express - News, No. 04-99-00848-CV, 2000 WL 1918877 (Tex. App.--San Antonio 2000, n.p.h.) when it held the following? "Use of Force reports, although filed in personnel files of police officers, are also public documents".

1350. For the record, factually is Sec. 406.013 Seal from the STATE OF TEXAS NOTARY PUBLIC LAW HANDBOOK true and correct as follows?

STATE OF TEXAS NOTARY PUBLIC LAW HANDBOOK, printed May, 1998 and distributed through and by the American Association of Notaries;

Sec. 406.013 Seal.

(a) A notary public shall provide a seal of office that clearly shows, when embossed, stamped or printed on a document, the words "Notary Public, State of Texas" around a star of 5 points, the notary public's name and the date the notary public's commission expire. The notary public shall authenticate all official acts with the seal of office.

(b) The seal may be circular form not more than 2" in diameter or a rectangular form not more than 1" in width and 2½" in length. The seal must have a serrated or milled edge border.

(c) The seal must be affixed by a seal press or a stamp that embosses or prints a seal that legibly reproduces the required elements of the seal under photographic methods. An indelible inkpad must be used for affixing by a stamp the impression of a seal on an instrument to authenticate the notary public's official Act.

1351. For the record, factually is Texas Govt. Code § 602.002 stated correctly, as follows?

Texas Govt. Code § 602.002 (Vernon 1994) to administer oaths and affidavits. Commonly used officials include notaries public and judges. The seal of the person administering the oath should be visible. If the person is a notary public, Texas Govt. Code Ann. § 406.013 (Vernon 1990) requires the seal be affixed in a way "that legibly reproduces the required elements of the seal under photographic methods."

1352. For the record, factually if a seal is not visible of an authorized STATE AGENT that may administer an oath, then said AGENT, ACTOR is masquerading as a public servant and the ACTOR and the principal are both liable for damages?

1353. For the record, factually are all elected and appointed state officers required to file statement of office with the SECRETARY OF STATE before taking the Oath of Office?

1354. For the record, factually what are the penalties when an elected or appointed officer does not file the statement of office with the SECRETARY OF STATE?

1355. For the record, factually if an elected or appointed officer did not file the statement of office and the oath of office correctly what are the penalties for this action?

1356. For the record, factually did the purported Court error when it held in Thomas v. State, 751 S.W. 2d 601? "Sentence to time served is unauthorized."

1357. For the record, factually did the purported Court error when it held in Pullman v. Allen, 466 U.S. 522 (1984)?

"Incarceration to coerce bond is unconstitutional."

1358. For the record, factually is it lawful to incarcerate someone to identify them when no crime was committed?

1359. For the record, factually how is it possible for SILVIA PEREZ, as a paid AGENT for the STATE OF TEXAS, the COUNTY OF DALLAS, the CITY OF DALLAS, to possibly without a reasonable doubt claim that the ACTOR JEFFERY STUART KATZ did anything, when in fact, she never met JEFFERY STUART KATZ, since JEFFERY STUART KATZ is a legal fiction, an artificial entity, created by AGENT GUENTHER, when AGENT GUENTHER criminally falsified the record to extort unlawful funds from ME, Jeffrey Stuart, Katz?

1360. For the record, factually do the acts of / by AGENTS, ACTORS SILVIA PEREZ, KARL GUENTHER, et. al. prove that a conspiracy exists against ME, Jeffrey Stuart, Katz?

1361. For the record, factually why is it the policy of the DPD to criminally convert one's given and family name to a nom degere, idem sonas, a strawman to extort Federal Reserve Notes?

1362. For the record, factually what is the meaning and definition of the "strawman"?

1363. For the record, factually how did the policy of criminally converting a given and family name, into a legal fiction, an artificial entity, begin?

1364. For the record, pursuant to Moore v. Big Picture Co., 828 F.2d 270, 275 (5th Cir. 1987) is someone protected from the unauthorized appropriation of one's name, image, or likeness?

1365. For the record, factually is Texas a democracy or republican form of government?

1366. For the record, factually what is the meaning and definition of "democracy"?

1367. For the record, factually what is the meaning and definition of "republic"?

1368. For the record, factually what is the meaning and definition of "the CITY OF DALLAS"?

1369. For the record, factually what is the meaning and definition of "the City of Dallas"?

1370. For the record, factually what is the meaning and definition of "the COUNTY OF DALLAS"?

1371. For the record, factually what is the meaning and definition of "the County of Dallas"?

1372. For the record, factually what is the meaning and definition of "Dallas County"?

1373. For the record, factually what is the significance of the difference of the COUNTY OF DALLAS and Dallas County?

1374. For the record, factually is the STATE OF TEXAS, the COUNTY OF DALLAS, the CITY OF DALLAS de jure or defacto?

1375. For the record, factually did the alleged Court mistake in Mitchum v. Foster, 92 S.Ct. 2151 (1972)?

"If the State courts had proven themselves competent ... to maintain law and order, we should not have been called upon to legislate ... We are driven by existing facts to provide for the several states in the South what they themselves; i.e., the full and complete administration of justice in the courts ... Sheriffs having eyes to see, see not; judges having ears to hear, hear not; witnesses conceal the truth or falsify it; grand and petit juries act as if they might be accomplices ... (A)ll the apparatus and machinery of civil government skulk away as if government and justice were crimes and feared detection. Among the most dangerous things an injured party can do is appeal to justice." Mitchim, supra at 2161.

1376. For the record, factually when Public Information Act Requests are denied, ignored or the requested information is not forthcoming can that be construed as bad faith?

1377. For the record, factually what is the meaning and definition of "bad faith"?

1378. For the record, factually was Ben Franklin correct when he said the following?

"In free governments, the rulers are the servants and the people their superiors, and sovereigns. For the former, therefore, to return among the latter is not to degrade but to promote them."

1379. For the record, factually can YOU disprove the following statement by my associate Ken Ralph, Evans?

"The TEXAS BAR ASSOCIATION must be disbanded immediately for reason, it and its' members are a threat to the public's health, safety and welfare of the people of Texas and their property. The members of the association have used and are using their occupational license as instruments for economical terrorism against the people of Texas and their property for the BAR members own self-enrichment. The members of this association are a criminally insane racketeering cartel, run out of the SUPREME COURT OF THE STATE OF TEXAS, aided and abetted by the Governor and the Legislators of THE STATE OF TEXAS, which have imported foreign alleged law and has / are using that foreign law for the overthrown our "Declaration / Bill of Rights", our republican form of Government and close our, WE the People of Texas Courts leaving us no remedy for lawful redress of our grievances. YOU the people of Texas better wake up now and help to disband this association or YOU will be orphans in the land YOUR farther fought and died for, YOU are now almost out of time, for YOU to ignore this warning will be to (y)our own pearl and the price YOU must pay will be the lost of all YOU hold dear.

1380. For the record, factually can YOU dispute the following statement by Ken Ralph, Evans?

"The members of the American and the State's Bar Associations' are operating a criminal racketeering extortion cartel for their own self enrichment in all of the several united States. The Bar members are aided and abetted by the Executive and Legislative branches of our, the people's Government. The Bar members are using arm thugs policy enforcement officers (POLICE) for enforcement for their extortion enterprise. This includes all bar members those on the benches in all levels of the Courts. These criminals have created a monopoly and taken over our Courts, no matter what Court YOU go in there is always one on the Bench and are more there to get their cut of the take. The take is either the life, liberty or property of US, WE the People for the Bar members own self enrichment".

1381. For the record, factually is alleged Governor Perry an attorney at law?

1382. For the record, factually if Governor Perry is an attorney at law, as well as, an Officer of the Court does a conflict of interest exist?

1383. For the record, factually how many STATE OF TEXAS Legislators are attorneys at law?

1384. For the record, factually since attorneys are officers of the alleged courts, does this stand as proof that the separation of powers no longer exists, because attorneys routinely pass laws and then profit by their enforcement which is repugnant to the very concept(s) of separation of powers and the three branches of government that All public servants took an oath to uphold?

1385. For the record, factually is EX-ATTORNEY GENERAL DAN MORALES incarcerated for abusing the public trust when he tried to profit from the laws passed by fellow attorneys at law?

1386. For the record, factually are attorneys at law in business to make a profit at the expense of We the People?

1387. For the record, factually is the following an accurate description of the American Inns of Court (AIC)?

The AIC is designed to improve the skills, professionalism and ethics of the bench and bar.

An American Inn of Court is an amalgam of judges, lawyers, and in some cases, law professors and law students. Each Inn meets approximately once a month both to "break bread" and to hold programs and discussions on matters of ethics, skills and professionalism.

1388. For the record, factually is the Mission of the American Inns of Court (AIC) is to foster excellence in

professionalism, ethics, civility, and legal skills for judges, lawyers, academicians, and students of the law in order to perfect the quality, availability and efficiency of justice in the United States?

1389. For the record, factually how many alleged judges / lawyers are in the AIC in the STATE OF TEXAS?

1390. For the record, factually how many alleged judges / lawyers are in the AIC in the CITY OF DALLAS?

1391. For the record, factually is alleged JUDGE C. VICTOR LANDER a member of the AIC or a Masonic Order?

1392. For the record, factually is alleged CITY PROSECUTOR ROBERT MIKLOS, AARON RAYNISH, et. al. members of the AIC or a Masonic Order?

1393. For the record, factually is the American Inns of Court 1 of the fastest growing legal organizations in the country?

1394. For the record, factually are nearly 25K judges and lawyers actively participating in an Inn of Court, and another 50K judges and lawyers are alumni of an Inn?

1395. For the record, factually are there more then 100 accredited law schools affiliated with the AIC and each participate with one or more Inns in some way?

1396. For the record, factually is the AIC endorsed by the Conference of Chief Justices, the Judicial Administration Division of the ABA, and the 7th Circuit Committee on Professionalism?

1397. For the record, factually does the AIC foster, promote an environment where collusion and access is agreeable?

1398. For the record, factually is it possible to defend oneself against criminal charges if one is not an attorney?

1399. For the record, factually where does someone purchase a license to practice the law?

1400. For the record, factually what does it cost to purchase a license to practice law?

1401. For the record, factually does the State of Texas profit by YOU purchasing a license to practice law?

1402. For the record, factually did YOU pay with lawful money as described in 12 USC § 152?

1403. For the record, what is the intent of 12 USC § 152 which plainly and clearly describes "...the terms "lawful money" and "lawful money of the United States" shall be construed to mean gold or silver coin of the United States;..."?

1404. For the record, factually is 12 USC § 411 correct when it describes the purpose of a Federal Reserve Note?

12 USC § 411 Issuance to reserve banks; nature of obligation; redemption

"Federal reserve notes, to be issued at the discretion of the Federal Reserve Board for the purpose of making advances to Federal reserve banks through the Federal Reserve agents as hereinafter set forth and for no other purpose, are hereby authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal reserve bank."

1405. For the record, factually do the words of Marcus Tullius, Cicero appear vital and critical today, in that the more things change in actuality, the more things stay the same?

"A nation can survive its fools and even the ambitious. But it cannot survive treason from within. An enemy at the gates is less formidable, for he is known and he carries his banners openly. But the traitor moves among those within the gates freely, his sly whispers rustling through all the alleys, heard in the very halls of government itself. For the traitor appears not traitor: He speaks in the accents familiar to his victims and he wears their face and their garments and he appeals to the baseness that lies deep in the hearts of all men. He rots the soul of a nation. He works secretly and unknown in the night to undermine the pillars of a city; he infects the body politic so that it can no longer resist. A murderer is less to be feared"?

1406. For the record, factually what is the meaning and definition of "treason"?

1407. For the record, factually what is the meaning and definition of "traitor"?

1408. For the record, factually what is the meaning and definition of "perjury"?

1409. For the record, factually what is the meaning and definition of "excessive force"?

1410. For the record, factually does the STATE OF TEXAS control or influence insurance company policies?

1411. For the record, factually does the STATE OF TEXAS or any of the funds in its' control, invest in insurance cos.?

1412. For the record, factually if the STATE OF TEXAS or any of its' funds invests in insurance cos. does this cause a conflict of interest exist?

1413. For the record, factually does the STATE OF TEXAS profit from a scheme whereby travelers are coerced into purchasing insurance, when there is NO law requiring anyone to have a TEXAS DRIVER LICENSE?

1414. For the record, factually did the purported Court mistake in De Lovo v. Boit, 7 Fed Case No. 3, 776?
"A policy of insurance is a maritime contract and therefore of Admiralty Jurisdiction."

1415. For the record, factually did the alleged Court fail in LaPoint v. Richards, 66 Wn.(2d) 585, 588 (July 8, 1965)?
"The existence of an insurance policy is a matter of contract law, since insurance involves a contractual relationship between the insurer and the insured."

1416. For the record, factually did the alleged Court error when it held in the April 14, 1980 case, Mutual of Enumclaw v. Wiscomb, 25 Wn.App. 841, 846, 611 P.2d 1304?
"Traditionally, insurance contracts have been considered to be private contracts between the parties."

1417. For the record, factually does the STATE OF TEXAS promote DRIVER EDUCATION CLASSES, which fosters the misbelief and falsehood, that WE the People are "driver's" or "operators", when in fact WE are "travelers" exercising OUR right to travel freely, in OUR private conveyance for recreation, and pleasure, in the pursuit of happiness?

1418. For the record, factually did the purported Court error when it held in Howlett v. Rose, 496 U.S. 356 (1990)?
"Federal Law and Supreme Court Cases apply to State Court Cases."

1419. For the record, factually did the purported Court error in The People v. Mercein, 3 Hill (N.Y.) 420; 30 U.S. 61?
"No one should be twice harassed for the same offense."

1420. For the record, factually did the purported Court error in Griswold v. Waddington, 16 Johns. (N.Y.) 438, 489?
"When the subject is extinguished, the incident ceases. Thus, when the business for which a partnership has been formed is completed, or brought to an end, the partnership itself ceases."

1421. For the record, factually did the purported Court error in Green v. Judson River R Co., 28 Barb. (N.Y.) 9. 22?
"It is best not to unsettle things which are originally established."

1422. For the record, factually did the purported Courts error in Yates v. Lansing, 9 Johns. (N.Y.) 395, 428; AND Moore v. Lyons, 25 Wend. (N.Y.) 119, 142?
"We are to adhere to precedents, and not to unsettled things which are not established."

1423. For the record, factually did the alleged Court error when it held Rodwell v. Rowland (N.C.) 50 S.E. 319, 317?
"Precedents are principles of law which are also conclusions, or decision in a cause, and not a process of reasoning or illustrating."

1424. For the record, did the purported Court error in Johnson v. Western Union Tele. Co. (N.C.) 57 S.E. 122, 124?
"The doctrine of stare decisis, commonly called the "doctrine of precedents," means that we should adhere to decided cases and settled principles and not disturb matters which have been established by judicial determination."

1425. For the record, factually are YOU aware on April 16, 2001 c.e. I recorded "The Declaration and Affidavit with Brief in Support of Exercising of My Liberty supporting my right to travel" into the pubic record in doc. no. 1347922 – 2001 Vol. 074 Pg. 01533, which stands uncontested as of this date?

1426. For the record, factually are YOU aware that on or about 2001, I, ME, Jeffrey Stuart, Katz had appealed citations from the CITY OF WILMER to the COUNTY OF DALLAS COURT where all charges were dismissed? The Court fees were waived. The alleged citations included Expired Driver's License, No Financial Responsibility and Speeding. I gave the paralegal the aforementioned document, "The Declaration and Affidavit with Brief in Support of Exercising of My Liberty supporting my right to travel" to the attorneys representing the STATE of TEXAS?

1427. For the record, factually when the alleged fictitious Plaintiff failed to state a claim to which relief could be granted, and the above charges were dismissed why are the identical charges again reappearing in 2004 when the charges were res judicata?

1428. For the record, factually what is the meaning and definition of "res judicata"?

1429. For the record, are YOU aware on August 27, 2003 c.e. I denied and rebutted the presumption of corporate status pursuant to TRCP Rule 52 by affidavit in the public record in doc. no. 333793 – 2003 Vol. 1326 Pg. 295, which stands uncontested? Consequently, I am not a person, resident, subject, an individual or a corporation and not a slave to any (wo)man, fictitious corporation or artificial entity.

1430. For the record, factually did alleged Court error in Galleria Bank v. Southwest Properties, 498 SW 2nd? "The failure of an adverse party to deny under oath the allegation that he is incorporated with the necessity of proof of the fact [it becomes part of the official record]."

1431. For the record, factually when was I given the opportunity to object to the nexus created by the AGENT, ACTOR GUENTHER and the MUNICIPAL COURT of DALLAS?

1432. For the record, factually with NO NEXUS between JEFFERY STUART KATZ and ME, Jeffrey Stuart, Katz except for the misuse of my copyright, why are these proceedings NOT null and void, due to lack of subject, matter, and jurisdiction, as well as, numerous due process of the law violations?

1433. For the record, factually did the alleged Court error when it held in Bullington v. Angel, 220 N.C. 18? "Jurisdiction is the power to declare the law; and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause."

1434. For the record, factually did the purported Court error in Cummings v. Missouri, 4. Wall. (71 U.S.) 277, 320? "The deprivation of any rights may be punished."

1435. For the record, factually what is the meaning and definition of "rights"?

1436. For the record, factually what is the meaning and definition of "remedy"?

1437. For the record, factually did the purported Court error in Walters v. City of Ottawa, 88 N.E. 651, 654, 240 Ill. 259? "Remedy signifies the judicial means for enforcing a right or redressing a wrong"

1438. For the record, factually did the purported Court mistake when it held in Campbell v. Holt, 115 U.S. 620, 631? "Remedies are the life of rights."

1439. For the record, factually what is the meaning and definition of "genocide?

1440. For the record, factually why is the STATE OF TEXAS, the COUNTY OF DALLAS, and the CITY OF DALLAS practicing genocide on the inhabitants of the land or the sea?

1441. For the record, factory are the actions of the PLAINTIFF'S and or its' ACTORS, AGENTS consistent with the U.S.

position, as a signatory to the UN Convention on Prevention & Punishment of the Crime of Genocide Treaty, which describes genocide as "acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group"?

1442. For the record is the locking and torturing non-combative (wo)men (in)consistent with the Geneva Convention?

1443. For the record, factually is restraining my liberty by locking ME up against my will, in cruel and unusual conditions proper, when All Class "C" Misdemeanors are non-jailable offenses?

1444. For the record, factually what is the meaning and definition of "cruel and unusual'?

1445. For the record, factually are most people aware of the dismal, unsanitary conditions in the LEW STERRETT DETENTION CENTER?

1446. For the record, factually would most people be shocked to learn that no bedding, (toilet tissue is used as a pillow, as well as sheets), or toiletries are issued, the lights stay on 24/7, and YOU sleep on metal bunk beds in very cold temperatures?

1447. For the record, factually would most people be shocked to learn that men are lead to a supposed court with a gold-fringed flag in leg and wrist irons (cuffs) in groups of 3 or more?

1448. For the record, factually would most people be appalled to learn that LEW STERRETT DETENTION CENTER failed an inspection due to unsanitary conditions?

1449. For the record, factually would people like to know that in case after case the alleged JUDGE or MAGISTRATE dismissed "as time served" charges that routinely accounted for more than 1000 Federal Reserve Notes which is contrary to the intent of the law?

1450. For the record, factually are YOU aware that I did not eat the unhealthy meals served, which were baloney sandwiches, (2 slices of baloney on white bread) while I was kidnapped and held against my will in an cruel and unusual conditions?

1451. For the record, factually are YOU aware on August 27, 2003 c.e. I recorded my "Declaration of Copyright by Affidavit"? In this affidavit I copyrighted the "LEGAL FICTION" "STRAWMAN" (all caps name - idem sonans, nom de guerre) and became the secured party, pursuant to public record, doc. no. 333793 - 2003 Vol. 1326 Pg. 301, which stands uncontested! I declare that "JEFFREY KATZ©" and all derivatives thereof are "LEGAL FICTIONS" and are my private intellectual property. I hold the exclusive title to "JEFFREY KATZ©" and all derivatives thereof. I have not given my consent for any of the parties named above in cause to use my private intellectual property. Notice is made - I am preparing an invoice for this violation of the law.

1452. For the record, factually are YOU aware on May 21, 2004 c.e. I recorded my "Notice of Revocation and Recession of Signature by Affidavit" to public record, doc. no. 2898466 – 2004 Vol. 099 Pg. 00165, which stands Uncontested?

This document cancelled all contracts by removing and or revoking my signature from all fictitious corporations and legal fictions

1453. Are YOU aware on May 21, 2004 c.e. I recorded the "Notice of Fraud of the STATE OF TEXAS COURTS by Affidavit"? I proved the fraud and extortion of the STATE OF TEXAS and their AGENTS, ACTORS pursuant to public record, in doc. no. 2898468 – 2004 Vol. 099 Pg. 00187, and this document stands uncontested.

1454. For the record, factually are YOU aware on May 14, 2004 c.e. I recorded the "Declaration of Torture, Brutality, Fraud, Deceit and Extortion by Affidavit" whereby I recorded the truth regarding my assault and kidnapping by DPD AGENT, ACTOR GUENTHER and his accomplices, pursuant to public record, in doc. no. 2888138 – 2004

Vol. Pg. , and this document stands uncontested?

1455. For the record, factually do you find Abraham Lincoln's statement inspiring?

"This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing government, they can exercise their constitutional right of amending it, or exercise their revolutionary right to overthrow it".

1456. For the record, factually did John F. Kennedy state the truth when he said, "If you make peaceful change impossible, you make violent revolution inevitable"?

1457. For the record, factually do YOU consider the following statement by John Quincy Adams discouraging?

"Posterity, you will never know how much it has cost my generation to preserve your freedom. I hope you will make good use of it".

1458. For the record, factually does the DPD "pre-emptive doctrine" increase the threat to "domestic terrorism"?

1459. For the record, factually when a group of armed foreign government AGENTS shoot YOU 10 times or more can this be an "Act of Terrorism"?

1460. For the record, factually what are examples of government AGENTS violating the 4th Amendment's guarantee against unreasonable searches & seizures?

1461. For the record, factually what is the meaning and definition of "socially patterned defects"?

1462. For the record, factually what is the meaning and definition of "social-fantasy systems"?

1463. For the record, factually what is the meaning and definition of "mass psychosis"?

1464. For the record, factually what is the meaning and definition of "bond"?

1465. For the record, factually what is the meaning and definition of "performance bond"?

1466. For the record, factually what is the meaning and definition of "payment bond"?

1467. For the record, factually what is the meaning and definition of "silver bond"?

1468. For the record, factually what is the meaning and definition of "chattel"?

1469. For the record, factually what is the meaning and definition of "chattel property"?

1470. For the record, factually what is the meaning and definition of "goods"?

1471. For the record, factually what is the meaning and definition of "merchandise"?

1472. For the record, factually does the CORRECTION CORP OF AMERICA, in Nashville, Tennessee own all the private prison systems in AMERICA?

1473. For the record, factually how does the selling of commercial paper, utilizing performance and payment bonds (a)effect the citizens of the United States of America?

1474. For the record, factually do banks underwrite the bonds?

1475. For the record, factually are there several types or forms of jails throughout the U.S. which generate income?

1476. For the record, factually how much profit is made by the LEW STERRETT DETENTION CENTER?

1477. For the record, factually what is the cost of housing a prisoner in the LEW STERRETT DETENTION CENTER?

1478. For the record, factually is the health of the prisoners in their charge the responsibility DALLAS COUNTY JAIL?

1479. For the record, factually when one is injured, when admitted to the LEW STERRETT DETENTION CENTER and the nurse dresses a wound, is it considered neglect when the prisoner asks for a new bandage and not allowed treatment after being incarcerated for 3 or more days?

1480. For the record, factually what is the meaning and definition of "neglect"?

1481. For the record, factually what is the proper treatment for a wound created by pepper spray?

1482. For the record, factually what is the meaning and definition of "profit"?

1483. For the record, factually what is the meaning and definition of "income"?

1484. For the record, factually what is the meaning and definition of "influence"?

1485. For the record, factually what is the meaning and definition of "influencing a public official"?

1486. For the record, factually what is the meaning and definition of "filing a false document"?

1487. For the record, factually are jails warehouses and prisoners the merchandise or goods?

1488. For the record, factually is it possible to get complete accounting of my case?

1489. For the record, factually what is the meaning and definition of "must"?

1490. For the record, factually what is the meaning and definition of "at arms length"?

1491. For the record, factually what is the meaning and definition of "Registered Voter"?

1492. For the record, factually what is the meaning and definition of "Qualified Elector"?

1493. For the record, factually what is the meaning and definition of "regular on its face"?

1494. For the record, factually what is the meaning and definition of "regular"?

1495. For the record, factually what is the meaning and definition of "remonstrance"?

1496. For the record, factually what is the meaning and definition of the "Doctrine of Unjust Enrichment"?

1497. For the record, factually what is the meaning and definition of "unjust"?

1498. For the record, factually what is the meaning and definition of "redress"?

1499. For the record, factually what is the meaning and definition of "punitive"?

1500. For the record, factually what is the meaning and definition of "Star Chamber"?

1501. For the record, factually what is the meaning and definition of "prudent"?

1502. For the record, factually what is the meaning and definition of "prudence"?

1503. For the record, factually what is the meaning and definition of "punctilious"?

1504. For the record, factually what is the meaning and definition of "insufficient"?

1505. For the record, factually what is the meaning and definition of "evasion"?

1506. For the record, factually what is the meaning and definition of "evasive"?

1507. For the record, factually what is the meaning and definition of "evasive answer"?

1508. For the record, factually what is the meaning and definition of "damages"?

1509. For the record, factually what is the meaning and definition of "actual damages"?

1510. For the record, factually what is the meaning and definition of "compensatory damages"?

1511. For the record, factually what is the meaning and definition of "Irreparable damages"?

1512. For the record, factually what is the meaning and definition of "pecuniary damages"?

1513. For the record, factually what is the meaning and definition of "punitive damages"?

1514. For the record, factually what is the meaning and definition of "substantial damages"?

1515. For the record, factually what is the meaning and definition of "deceit"?

1516. For the record, factually what is the meaning and definition of "debauch"?

1517. For the record, factually what is the meaning and definition of "damage to person"?

1518. For the record, factually what is the meaning and definition of "man"?

1519. For the record, factually what is the meaning and definition of "moral turpitude"?

1520. For the record, factually what is the meaning and definition of "danger"?

1521. For the record, factually what is the meaning and definition of "dangerous place"?

1522. For the record, factually what is the meaning and definition of "dangerous weapon"?

1523. For the record, factually what is the meaning and definition of "duress"?

1524. For the record, factually what is the meaning and definition of "duress of imprisonment"?

1525. For the record, factually what is the meaning and definition of "duress per minas"?

1526. For the record, factually what is the meaning and definition of "duressor"?

1527. For the record, factually what is the meaning and definition of "duty"?

1528. For the record, factually what is the meaning and definition of "municipal"?

1529. For the record, factually what is the meaning and definition of "municipal charter"?

1530. For the record, factually what is the meaning and definition of "Municipal Corporation"?

1531. For the record, factually what is the meaning and definition of "Municipal Corporation de facto"?

1532. For the record, factually what is the meaning and definition of "tort"?

1533. For the record, factually what is the meaning and definition of "written instrument"?

1534. For the record, factually what is the meaning and definition of "instrument"?

1535. For the record, factually what is the meaning and definition of "Writ"?

1536. For the record, factually what is the meaning and definition of "Writ of conspiracy"?

1537. For the record, factually what is the meaning and definition of "Writ of deceit"?

1538. For the record, factually what is the meaning and definition of "Writ of error"?

1539. For the record, factually what is the meaning and definition of "Writ of restitution"?

1540. For the record, factually are the actions of the Bush Administration regarding the restrictions of WE the People's liberty and rights in harmony with the law?

1541. For the record, factually did the purported Court error when it held in U.S. v. Prudden 424 Fed. 2nd 1021?

"Silence equates to fraud when there is a legal or moral duty to respond, or where a question left unanswered would be intentionally misleading."

1542. For the record, factually did the purported Court mistake when it held in Carmine v. Bowen, 64 A. 932 (1906)?

"Your continued silence will activate estoppel by acquiescence."

1543. For the record, factually did the alleged Court error when it held in U. S. v. Tweel, 550 F.2d 297, 299 (1977)?

"Your silence will also constitute fraud."

1544. For the record, factually did the alleged Court mistake when it held in U.S. v Throckmorton, 98 US 61?

"Fraud vitiates the most solemn contracts, documents, and even judgments."

1545. For the record, factually did the alleged Court mistake when it held in Cantu v. Holiday Inns, Inc., 910 S.W.2d 113, 116 (Tex. App. Corpus Christi 1995)?

"Attorney's verification was insufficient when pleadings and affidavit did not show any basis for personal knowledge of relevant facts."

1546. For the record, factually are the following causes of action valid in this matter in a counter suit?
a. Conspiracy to Discriminate and Deny Rights
b. Denial of Due Process
c. Denial of Access to the Court
d. Obstruction of Justice
e. Felony Breach of Oath
f. Deliberate Perjury
g. Dereliction of Duty
h. Accepting State Funds Under False Pretences
i. Overthrowing the Texas Constitution
j. Misuse of government documents
k. Forgery
l. Official Misconduct

Appendix I

Definitions and / or Phrases

A

Abuse of discretion
Actionable fraud
Actionable negligence
Actual damages
Adhesive contract or agreement
Administrative Law
Administration of justice
Admiralty Law
Against good morals
Alias
Alleged
Annexation
Aggravated assault
Aggravated kidnapping
Artificial entity
Assault
At arms length
At law
Attacked
Attorn
Attorney at law
Automobile

B

Bad faith
Bad government
Barratry
Base consideration
Benefits of discussion
Beyond a reasonable doubt
Bond
Body politic
Bribery

C

Carefully crafted
Certificate
Chattel
Chattel property
Citizen
(c)itizen
Citizenship
CITY OF DALLAS
City of Dallas
Clearly erroneous
Coerce
Compromise
Contempt of Court
COUNTY OF DALLAS
County of Dallas
Collusion
Color of law
Command responsibility
Commerce and Trade
Communism
Compensatory damages
Competent evidence
Complaining party
Conflict of interest
Conspiracy
Constitutional Right
Court of Record
Court of Equity
Court of Law
Creditor
Crimes against humanity
Currency

D

Dallas County
DALLAS COUNTY
Damages
Damage of person
Danger
Dangerous place
Dangerous weapon
Debauch
Debtor
Deceit
Deceptive practice
Defacto Government
Defective service
Defendant
Definitive proof
De jure govt.
Democracy
Dignity
Discovery
Disparity of Force
Dismissed
Dispute
District
Doctrine
Doctrines of Law
Doctrine of Nihilism
Doctrine of Unjust Enrichment
Does not impose any legal disability or disadvantage
Driver
Driver's license
Driving
Duress
Duress of imprisonment
Duress per minas
Duressor
Duty

E

Enemy Combatant
Enemy spy
Error
Esquire
Ethical
Evasion
Evasive
Evasive answer
Evidence
Excessive force
Exhaust
Exhaust all administrative remedies
Expatriation
Extortion

F

Fair
Fair and impartial
Fellow
Fictitious
Fidelity
Filing a false document
Financial interest
Forceful
Foreign Registration Number
Forgery
Fraud
Fraud by deceit
Fraud by omission
Free
Freedom
Free government
Free people
Frivolous
Fundamental

G

Good faith
Good government
Good money
Goods
Grievous injury of people in police custody
Guaranteed
Guest

H

Hearsay evidence
High standards of perfection of lawyers
Highwayman
Highway robbery
Humanity

I

idem sonas
Imaginary
Income
Individual
Inferior Court
Infidelity
Influence
Influencing a public official
Inhabitant of the land and or sea
Inheritance
In law
Insanity
Instrument
Insufficient
Intentional
Interests
Interests of justice
Interstate commerce
Intrastate commerce
In propria persona
Irreparable damages
Is real

J

Justice
Jurisdiction
Jurisprudence
Jury of my peers
Jury trial

K

Knight

L

Lack of standing
Lack of understanding
Lawful money
Law of the Merchants
Least restrictive means
Legal fiction
Legal plunder
Legal tender
Liberty
Liberty of contract
License
Limousine
Litigant(s)

M

Malfeasance
Malice
Malicious
Malicious injury
Malicious prosecution
Malicious trespass

Malpractice
Malpractice insurance
Man
Master
Maxims of Law
Meeting of the minds
Merchandise
Money
Moral turpitude
Motor vehicle
Municipal
Municipal charter
Municipal corporation
Municipal corporation de facto
Must
My legal status
My political status
Myth

N

Napoleonic Law
National currency
Nationality
Natural rights
Neglect
Negligence
Nexus
Nisi prius
Nom degerre
Non-resident
Non-resident alien
Nonsense

O

Obstruction of Justice
Oligarchy
On or about
Operating
Operator
Operator's license
Optional completeness

P

Partnership
Passenger(s)
Payment bond
Pecuniary damages
Performance bond
Person
Personam jurisdiction
Perjury
Pleading
Policy
Positive law
Practice
Private conveyance
Private Law
Private property
Private transportation
Profit
Promissory notes
Pro per
Pro se
Prudent
Prudence
Public Law
Public nuisance
Public Policy
Public right of way
Public tort
Public transportation
Public trust
Pecuniary damages
Punctilious
Punitive
Punitive damages

Purposeful

Q

Qualified
Qualified Elector

R

Racketeering
Real
Real world
Reasonable
Redress
Registered Voter
Regular
Regular on its face
Remonstrance
Removed by reasonable construction
Resident
Restrain
Revenue
Roman Civil Law
Remedy
Republic
Republic of Texas
Republican government
Rights
Robbery

S

Scales of Justice
Sedition
Shake down
Silver bond
Slavery
Socialism
Sovereignty
Standing
Star Chamber
State of Texas
STATE OF TEXAS
Statute of limitation on fraud
Steering
Steering wheel
Storer of wealth
Strawman
Subject, matter, jurisdiction
Substantial damages
Summary reversal
Superior Court

T

Taking Clause
Talk it out
Taxicabs
Territory
The dignity of the court
The due process of the law
Theft
Theft of service
The Price of Liberty
The Torah
Threat
Threatening
Time-out
Tort
Totalitarian state
To serve and protect
Traffic
Traffic infractions
Traitor
Transportation
Treason
Trial by jury
True name
Tyranny

U

Unauthorized practice of law
Under penalties of perjury
Undue burden
Unethical
Unfair
Unjust
Uniform
Uniform Commercial Code
united states of America
united States of America
United States of America
UNITED STATES
United States

V

Victim
Void judgement

W

WE the People
Willful
Words of Art
Writ
Writ of conspiracy
Writ of deceit
Writ of error
Writ of restitution
Written instrument
Wrong
Wrong-doer
Wrongful behavior

Appendix II

Court Cases Cited

A

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B

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Barber v. State, 149 Tex. Crim. 18, 191 S.W.2d 879.

Barney v. Tourtellotte, 138 Mass. 108.

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Brotherhood of Railroad Trainmen v. Virginia ex re Virginia State Bar 377 U.S. 1, 7.

Bullington v. Angel, 220 N.C. 18.

Burgett v. Texas, 389 U.S. 109.

C

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Warning

I will pursue actions, which violate 18 USC § 241 – Conspiracy against rights – "If 2 or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, ... in the free exercise or enjoyment of any right or privilege secured to him by the Constitution..."

I will pursue actions, which violate 42 USC § 242 – Deprivation of rights under color of law - "Whoever, under color of any law, ... willfully subjects any person in any State, ... the deprivation of any rights, privileges or immunities secured or protected by the Constitutions ... "

I will pursue actions, which violate 42 USC § 1983 Civil action for deprivation of rights.

Prayer for Relief

This Bill of Particulars is made timely so that all parties, all evidence for a positive defense can be obtained and used at the alleged trial or hearing.

With All due respect,

in the service of YHVH,

By: _____ ARR

Jeffrey Stuart, Katz – Alleged Accused
in propria persona
c/o 9400 MacArthur Blvd. Suite 124 - 330
Irving, Texas republic [75063]
Copyright – Copyclaim!

Notice

Any references to government agencies, offices or instrumentalities thereof are presumed to be corporate entities. The use of a notary on this document does not constitute any adhesion, nor does it alter my status in any manner. The notary's purpose is for verification and identification only. I do not request entrance into any foreign jurisdiction.

Jurat Acknowledgement

On this the 16th day of the 11th month of the year 2004 c.e. Jeffrey Stuart, Katz did make, and sign this true and correct, "Bill of Particulars" before me, a Notary Public for the STATE OF TEXAS.

ANITA A. BAILOR
Notary Public, State of Texas
My Commission Expires
December 06, 2007

_____
Seal My Commission expires

_____
Notary

Certificate of Service

This is to certify that a true and correct copy of the Bill of Particulars has been served upon the AARON RAYNISH, CITY PROSECUTOR for the CITY OF DALLAS, et. al.

At: AARON RAYNISH, CITY PROSECUTOR
CITY OF DALLAS
c/o 2014 Main St.
DALLAS, TEXAS [75201]

By U.S. Certified Mail, Postage Prepaid; on this 16th day of November, 2004 c.e., Return Receipt Requested.

Article No. 7003 3110 0000 8765 8715

_____
Jeffrey Stuart, Katz

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FAX (512) 320-0996

AN INTRODUCTION TO EVIDENCE

Presented by

Vonciel Jones Hill
Attorney
Dallas

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

1. Recognize and define the terminology of evidence.
2. Rule correctly on evidence questions in the courtroom.
3. Identify recent case law affecting evidence.

EVIDENCE

Presented by:
Vonciel Jones Hill
Municipal Court Judge
City of Dallas

1

DEFINITION

EVIDENCE is the means by which alleged facts are proved or disproved. Proof is that which ordinarily convinces or satisfies one of the existence or non-existence of facts.

2

TYPES OF EVIDENCE

- (1) Oral statements of sworn witnesses
- (2) Documents
- (3) Tangible objects
- (4) Experimental and scientific tests

3

RULE 102. PURPOSE AND CONSTRUCTION

These rules shall be construed to:

- secure fairness in administration
- elimination of unjustifiable expense and delay
- promotion of growth and development of the law of evidence so that:
- the truth may be ascertained
- proceedings may be justly determined

4

RULE 103(a) EFFECT OF ERRONEOUS RULING

"Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected."

5

RULE 103(d) FUNDAMENTAL ERROR IN CRIMINAL CASES

"In a criminal case, nothing in these rules precludes taking notice of fundamental errors affecting substantial rights although they were not brought to the attention of the court."

6

RULE 104(a) Questions of Admissibility Generally.

"Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination the court is not bound by the rules of evidence except those with respect to privileges."

7

RULE 201(b) KIND OF FACTS

"A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

8

RULE 201(c) WHEN DISCRETIONARY

"A court may take judicial notice, whether requested or not."

9

RULE 201(d) WHEN MANDATORY

"A court shall take judicial notice if requested by a party and supplied with the necessary information."

10

RULE 401. DEFINITION OF "RELEVANT EVIDENCE"

- (1) evidence
- (2) having any tendency (to make the existence of)
- (3) any fact that is of consequence (to the determination of the action)
- (4) more probable or less probable (than it would be without the evidence.)

11

RULE 403. EXCLUSION OF RELEVANT EVIDENCE ON SPECIAL GROUNDS

12

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by

- (1) the danger of unfair prejudice,
- (2) confusion of the issues, or
- (3) misleading the jury,
- (4) or by considerations of undue delay,
- (5) or needless presentation of cumulative evidence."

13

RULE 406. HABIT; ROUTINE PRACTICE

"Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice."

14

RULE 410.(4). [PLEA DISCUSSIONS WITH PROSECUTOR]

"Except as otherwise provided in this rule, evidence of the following is not admissible against the defendant who made the plea or was a participant in the plea discussions:". . .

15

RULE 410(4). (CON'T.)

(4) "Any statement made in the course of plea discussions with an attorney for the prosecuting authority that does not result in a plea of guilty or a plea of *nolo contendere* or that results in a plea, later withdrawn, of guilty or *nolo contendere*."

16

RULE 504. HUSBAND-WIFE PRIVILEGES

(a) CONFIDENTIAL COMMUNICATION PRIVILEGE

(1) *Definition*. A communication is confidential if it is made privately by any person to the person's spouse and it is not intended for disclosure to any other person.

17

(3) Who may claim the privilege

The confidential communication privilege may be claimed by the person or the person's guardian or representative, or by the spouse on the person's behalf. The authority of the spouse to do so it presumed.

18

(4) Exceptions. **There is no confidential communication privilege:**

(A) *Furtherance of crime or fraud.* If the communication was made, in whole or in part, to enable or aid anyone to commit or plan to commit a crime or fraud. . . .

(C) Crime against spouse or minor child.

19

(b) Privilege not to testify in a criminal case.

(1) *Rule of privilege.* In a criminal case, the spouse of the accused has a privilege not to be called as a witness for the state. This rule does not prohibit the spouse from testifying voluntarily for the state, even over objection by the accused.

20

(3) *Who may claim the privilege.*

The privilege not to testify may be claimed by the person or the person's guardian or representative but not by that person's spouse.

21

(A) *Certain criminal proceedings.*
In any proceeding in which the person is charged with a crime against the person's spouse, a member of the household of either spouse, or any minor.

22

RULE 601. COMPETENT/ INCOMPETENT WITNESSES

The following witnesses shall be incompetent to testify in any proceeding subject to these rules:

(1) *Insane persons*

(2) *Children*

23

Rule 601(a) COMPETENCY AND INCOMPETENCY OF WITNESSES General Rule.

"Every person is competent to be a witness except as otherwise provided in these rules. The following witnesses shall be incompetent to testify in any proceeding subject to these rules:"

24

(1) Insane persons. Insane persons who, in the opinion of the court, are in an insane condition of mind at the time when they are offered as a witness, or who, in the opinion of the court, were in that condition when the events happened of which they are called to testify.

(2) Children. Children or other persons who, after being examined by the court, appear not to possess sufficient intellect to relate transactions with respect to which they are interrogated.

25

RULE 605. COMPETENCY OF JUDGE AS A WITNESS

"The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point."

26

RULE 611. MODE AND ORDER OF INTERROGATION AND PRESENTATION

(a) CONTROL BY COURT

"The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

27

RULE 611. (CON'T.)

(1) make the interrogation and presentation effective for the ascertainment of the truth,

(2) avoid needless consumption of time, and

(3) protect witnesses from harassment or undue embarrassment."

28

RULE 612. WRITING USED TO REFRESH MEMORY

"If a witness uses a writing to refresh memory for the purpose of testifying either

(1) while testifying;

. . . . [or]

(3) before testifying, in criminal cases;

an adverse party is entitled to have the writing produced at the hearing."

29

RULE 614. EXCLUSION OF WITNESSES

"At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion."

30

RULE 702. TESTIMONY BY EXPERTS

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."

31

(d) **Hearsay**. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

32

(e) **Statements Which Are Not Hearsay.**

A statement is not hearsay if:

(1) *Prior statement by witness*
(2) *Admission by party-opponent*

33

RULE 704. OPINION ON ULTIMATE ISSUE

"Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact."

34

RULE 801(d). DEFINITION

HEARSAY is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

35

RULE 801(e). DEFINITION

STATEMENT WHICH ARE NOT HEARSAY. A statement is not hearsay if:

36

(1) *Prior statement by witness.* The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

(A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding except a grand jury proceeding in a criminal case, or in a deposition;

(B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive;

37

(C) one of identification of a person made after perceiving the person; or

(D) taken and offered in a criminal case in accordance with Code of Criminal Procedure article 38.071.

38

RULE 901(a). REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION. (General Provision)

"The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."

39

RULE 902. SELF-AUTHENTICATION

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(4) **"Certified Copies of Public Records.** A copy of an official record or report or entry therein. . .certified as correct by the custodian or other person authorized to make the certification. . .

(6) **"Newspapers and Periodicals.** Printed materials purporting to be newspapers or periodicals."

40

RULE 1002. REQUIREMENT OF ORIGINALS

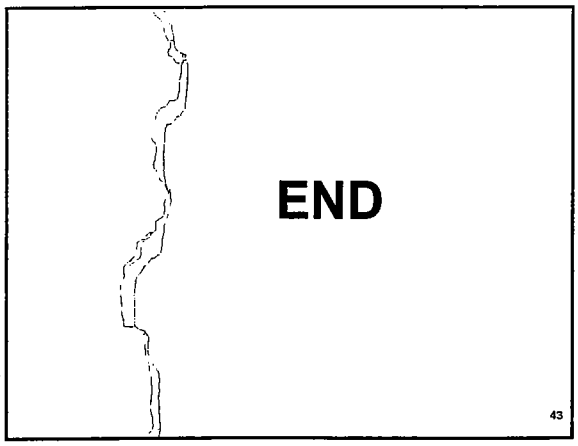
"To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required except as otherwise provided in these rules or by law."

41

RULE 1003. ADMISSIBILITY OF DUPLICATES

"A duplicate is admissible to the same extent as an original unless (1) a question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original."

42


END
43

EVIDENCE FOR MUNICIPAL COURTS

(Based Upon Texas Rules of Evidence)

Written By

Vonciel Jones Hill
Municipal Judge
City of Dallas

July 1998

EVIDENCE FOR MUNICIPAL COURTS

I. BASIC TERMINOLOGY

1. Definition

Evidence is the means by which alleged facts are proved or disproved. Proof is that which ordinarily convinces or satisfies one of the existence or non-existence of facts.

2. Types

Evidence includes:

1. Oral statements of sworn witnesses
2. Documents
3. Tangible objects
4. Experimental and scientific tests

II. THE RULES

Evidence law in Municipal Courts in Texas is governed by the Texas Rules of Evidence ["The Rules"]. All of the Rules are applicable to Municipal Courts, however, some are encountered more frequently than others. This paper focuses on those Rules which are most likely to arise in Municipal Court trials.

The paper is structured as follows:

(1) the Rule, as found in the Texas Rules of Evidence

(2) case(s) commenting upon the Rule, with a brief description of the nature of the case.

The Rules contemplate jury trials in Courts of Record. The Rules do not apply to Municipal magistrate duties such as setting bail and signing search warrants. The Rules are useful and helpful in trials before the Court and in non-Courts of Record for analyzing and reaching just results.

Texas Rules of Evidence are contained within ten Articles. Those Articles follow a logical progression, from a general introduction, to defining evidence, to who can and cannot relate evidence, to what can be said by witnesses or through documents.

ARTICLE I. GENERAL PROVISIONS

RULE 102. PURPOSE AND CONSTRUCTION

"These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined."

[No cases]

RULE 103(a) EFFECT OF ERRONEOUS RULING

"Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected."

RULE 103(d) FUNDAMENTAL ERROR IN CRIMINAL CASES

"In a criminal case, nothing in these rules precludes taking notice of fundamental errors affecting substantial rights although they were not brought to the attention of the court."

Lankston v. State 827 S.W.2d 907 (CCA 1992) - language of objections

Schweinle v. State 893 S.W.2d 708 (Tex. App-Texarkana 1995) - determination of admissibility within discretion of trial court; standard of review - "clear abuse of discretion"

Williams v. State 916 S.W.2d 53 (Tex. App. - Houston [1st Dist] 1996) - language of objections

ARTICLE II. JUDICIAL NOTICE

RULE 201(b) KIND OF FACTS

"A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

RULE 201(c) WHEN DISCRETIONARY

"A court may take judicial notice, whether requested or not."

RULE 201(d) WHEN MANDATORY

"A court shall take judicial notice if requested by a party and supplied with the necessary information."

Bender v. State 739 S.W.2d 409 (Tex. App. - Houston [14th District] 1987), aff'd per curiam, 761 S.W.2d 378 (CCA 1988) - judicial notice of geographic location.

Jenkins v. State 912 S.W.2d 793 (CCA 1995) - matters of common knowledge

ARTICLE III [No rules adopted at this time]

ARTICLE IV. RELEVANCY AND ITS LIMITS

RULE 401. DEFINITION OF "RELEVANT EVIDENCE"

" 'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

RULE 403. EXCLUSION OF RELEVANT EVIDENCE ON SPECIAL GROUNDS

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence."

RULE 406. HABIT; ROUTINE PRACTICE

[distinguished from 404(b) - Other Crimes, Wrongs, or Acts]

"Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice."

RULE 410.(4). [PLEA DISCUSSIONS WITH PROSECUTOR]

"Except as otherwise provided in this rule, evidence of the following is not admissible against the defendant who made the plea or was a participant in the plea discussions:"

. . . .

(4) "Any statement made in the course of plea discussions with an attorney for the prosecuting authority that does not result in a plea of guilty or a plea of *nolo contendere* or that results in a plea, later withdrawn, of guilty or *nolo contendere*."

Brown v. State 757 S.W.2d 739 (CCA 1988) - ". . . evidence is relevant only if it tends to make the existence of . . . [any fact] more probable or less probable." [at 740].

ARTICLE V. PRIVILEGES

RULE 504. HUSBAND-WIFE PRIVILEGES

(a) CONFIDENTIAL COMMUNICATION PRIVILEGE

(1) *Definition.* A communication is confidential if it is made privately by any person to the person's spouse and it is not intended for disclosure to any other person.

(2) *Rule of privilege.* A person, whether or not a party, or the guardian or representative of an incompetent or deceased person, has a privilege during marriage and afterwards to refuse to disclose and to prevent another from disclosing a confidential communication made to the person's spouse while they were married.

(3) *Who may claim the privilege.* The confidential communication privilege may be claimed

by the person or the person's guardian or representative, or by the spouse on the person's behalf. The authority of the spouse to do so it presumed.

(4) *Exceptions.* There is no confidential communication privilege:

(A) *Furtherance of crime or fraud.* If the communication was made, in whole or in part, to enable or aid anyone to commit or plan to commit a crime or fraud.

. . .

(C) *Crime against spouse or minor child.* In a proceeding in which the party is accused of conduct which, if proved, is a crime against the person of the spouse, any minor child, or any member of the household of either spouse.

***Note: (A)(4)(C)**

(b) PRIVILEGE NOT TO TESTIFY IN CRIMINAL CASE

(1) *Rule of privilege.* In a criminal case, the spouse of the accused has a privilege not to be called as a witness for the state. This rule does not prohibit the spouse from testifying voluntarily for the state, even over objection by the accused. A spouse who testifies on behalf of an accused is subject to cross-examination as provided in rule 611(b).

(2) *Failure to call as witness.* Failure by an accused to call the accused's spouse as a witness, where other evidence indicates that the spouse could testify to relevant matters, is a proper subject of comment by counsel.

(3) *Who may claim the privilege.* The privilege not to testify may be claimed by the person or the person's guardian or representative but not by that person's spouse.

(4) *Exceptions.* The privilege of a person's spouse not to be called as a witness for the state does not apply:

(A) *Certain criminal proceedings.* In any proceeding in which the person is charged with a crime against the person's spouse, a member of the household of ether spouse, or any minor.

(B) *Matters occurring prior to marriage.* As to matters occurring prior to the marriage.

***Note: (b)(3) and (b)(4)(A)**

Sterling v. State 814 S.W.2d 261 (Tex. App.- Austin 1991, PDR refused) - utterances privileged; acts not

Weaver v. State 855 S.W.2d 116 (Tex. App. - Houston [14th Dist.] 1993) - ". . . threats . . . clearly not intended to be kept private, and [do] not fall within the purview of the rule [of privileges]." (at 121).

Tejeda v. State 905 S.W.2d 313 (Tex. App. - San Antonio 1995) - statements by spouse who refuses to testify may be offered by other means.

ARTICLE VI. WITNESSES

RULE 601.(a) GENERAL RULE [RE: COMPETENT/INCOMPETENT WITNESSES]

"**General Rule.** Every person is competent to be a witness except as otherwise provided in these rules. The following witnesses shall be incompetent to testify in any proceeding subject to these rules:

(1) *Insane persons.* Insane persons who, in the opinion of the court, are in an insane condition of mind at the time when they are offered

as a witness, or who, in the opinion of the court, were in that condition when the events happened of which they are called to testify.

(2) *Children*. Children or other persons who, after being examined by the court, appear not to possess sufficient intellect to relate transactions with respect to which they are interrogated."

RULE 601. COMPETENCY OF JUDGES AS A WITNESS

"The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point."

RULE 611. MODE AND ORDER OF INTERROGATION AND PRESENTATION

(a) CONTROL BY COURT

"The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment."

RULE 612. WRITING USED TO REFRESH MEMORY

"If a witness uses a writing to refresh memory for the purpose of testifying either

(1) while testifying;

. . . . [or]

(3) before testifying, in criminal cases;

an adverse party is entitled to have the writing produced at the hearing, to

inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness."

RULE 614. EXCLUSION OF WITNESSES

"At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of:

(1) a party who is a natural person or in civil cases the spouse of such natural person;

(2) an officer or employee of a party in a civil cases or a defendant in a criminal case that is not a natural person designated as its representative by its attorney;

(3) a person whose presence is shown by a party to be essential to the presentation of the party's cause; or

(4) the victim in a criminal case, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial."

Reyna v. State 797 S.W.2d 189 (Tex. App. - Corpus Christi 1990, no petition) - child witness [competence to observe; capacity to recollect; capacity to narrate].

Young v. State 891 S.W.2d 945 (CCA 1994) - writing used to refresh memory.

Davis v. State 872 S.W.2d 743 (CCA 1994) - exclusion of witness.

Flores v. State 915 S.W.2d 651 (Tex. App. - Houston [14th Dist] 1996) - exclusion of witness

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

RULE 702. TESTIMONY BY EXPERTS

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."

Kelly v. State 824 S.W.2d 568 (CCA 1992) - novel scientific evidence [relevant and helpful]

Emerson v. State 880 S.W.2d 759 (CCA 1994) - reliability of scientific test

Forte v. State 935 S.W.2d 172 (Tex. App. - Ft. Worth 1996) - expert testimony must be relevant and reliable

ARTICLE VIII. HEARSAY

RULE 801.

(a) **Statement**. A "statement" is (1) an oral or written verbal expression or (2) nonverbal conduct of a person, if it is intended by the person as a substitute for verbal expression.

(b) **Declarant**. A "declarant" is a person who makes a statement.

(c) **Matter Asserted**. "Matter asserted" includes any matter explicitly asserted, and any matter implied by a statement, if the probative value of the statement as offered flows from declarant's belief as to the matter.

(d) **Hearsay**. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(e) **Statements Which Are Not Hearsay**. A statement is not hearsay if:

(1) *Prior statement by witness.* The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

(A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding except a grand jury proceeding in a criminal case, or in a deposition;

(B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive;

(C) one of identification of a person made after perceiving the person; or

(D) taken and offered in a criminal case in accordance with Code of Criminal Procedure article 38.071.

(2) *Admission by party-opponent.* The statement is offered against a party and is:

(A) the party's own statement in either an individual or representative capacity;

(B) a statement of which the party has manifested an adoption or belief in its truth;

(C) a statement by a person authorized by the party to make a statement concerning the subject;

(D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship; or

(E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

RULE 802. HEARSAY RULE

"Hearsay is not admissible except as provided by statute or these rules or by other rules prescribed pursuant to statutory authority. Inadmissible hearsay admitted without objection shall not be denied probative value merely because it is hearsay."

(a) Philosophy: (1) Misperceived

(2) Misremembered

(3) Miscommunicated

(4) Fabricated

(b) Safeguards (1) Oath

(2) Presence

(3) Cross

Bell v. State 877 S.W.2d 21 (Tex. App. - Dallas 1994) - hearsay statement offered to show intent or motive.

Jefferson v. State 900 S.W.2d 97 (Tex. App. - Houston [14th Dist.] 1995) - business records exception to hearsay rule.

Chambers v. State 905 S.W.2d 328 (Tex. App. - Ft. Worth 1995) - statement did NOT meet hearsay exception of present mental state.

Tejeda v. State 905 S.W.2d 313 (Tex. App. - San Antonio 1995) - excited utterance exception to hearsay rule.

Hunt v. State 904 S.W.2d 813 (Tex. App. - Ft. Worth 1995) - excited utterance [where time attenuated].

Adams v. State 936 S.W.2d 313 (Tex. App. - Tyler 1996) PDR refused - time lapse related to "excited utterance" - spontaneous utterances by children.

Hernandez v. State 939 S.W.2d 665 (Tex. App. - El Paso 1996) - business records accompanied by affidavit.

Nixon v. State 937 S.W.2d 610 (Tex. App. - Houston [1st Dist.] 1996) - statement offered to prove truth of matter asserted.

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

RULE 902. SELF-AUTHENTICATION

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(4) **"Certified Copies of Public Records.** A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2) or (3) of this rule or complying with any statute or other rule prescribed pursuant to statutory authority."

(6) **"Newspapers and Periodicals.** Printed materials purporting to be newspapers or periodicals."

Kephart v. State 875 S.W.2d 319 (CCA 1994) - authentication of video tapes.

Abbring v. State 882 S.W.2d 914 (Tex. App. - Ft. Worth 1994) - certified copies of public records.

Williams v. State 916 S.W.2d 53 (Tex. App. - Houston [1st Dist.] 1996) - proper predicate for admission of a letter.

Gibson v. State 952 S.W.2d 569 (Tex. App. - Ft. Worth 1997) - no need for extrinsic evidence to authenticate certified copies of public records.

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Richardson v. State 821 S.W.2d 304 (Tex. App. - Amarillo 1991) - best evidence of contents of document.

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TEXAS RULES OF EVIDENCE

Effective March 1, 1998

ARTICLE I. GENERAL PROVISIONS

RULE 101. TITLE AND SCOPE

(a) Title. These rules shall be known and cited as the Texas Rules of Evidence.

(b) Scope. Except as otherwise provided by statute, these rules govern civil and criminal proceedings (including examining trials before magistrates) in all courts of Texas, except small claims courts.

(c) Hierarchical Governance in Criminal Proceedings. Hierarchical governance shall be in the following order: the Constitution of the United States, those federal statutes that control states under the supremacy clause, the Constitution of Texas, the Code of Criminal Procedure and the Penal Code, civil statutes, these rules, and the common law. Where possible, inconsistency is to be removed by reasonable construction.

(d) Special Rules of Applicability in Criminal Proceedings.

(1) *Rules not applicable in certain proceedings.* These rules, except with respect to privileges, do not apply in the following situations:

(A) the determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104;

(B) proceedings before grand juries;

(C) proceedings in an application for habeas corpus in extradition, rendition, or interstate detainer;

(D) a hearing under Code of Criminal Procedure article 46.02, by the court out of the presence of a jury, to determine whether there is sufficient evidence of incompetency to require a jury determination of the question of incompetency;

(E) proceedings regarding bail except hearings to deny, revoke or increase bail;

(F) a hearing on justification for pretrial detention not involving bail;

(G) proceedings for the issuance of a search or arrest warrant; or

(H) proceedings in a direct contempt determination.

(2) *Applicability of privileges.* These rules with respect to privileges apply at all stages of all actions, cases, and proceedings.

(3) *Military justice hearings.* Evidence in hearings under the Texas Code of Military Justice, TEX. GOV'T CODE §432.001-432.195, shall be governed by that Code.

Notes and Comments

Comment to 1998 change: "Criminal proceedings" rather than "criminal cases" is used since that was the terminology used in the prior Rules of Criminal Evidence. In subpart (b), the reference to "trials before magistrates" comes from prior Criminal Rule 1101(a). In the prior Criminal Rules, both Rule 101 and Rule 1101 dealt with the same thing — the applicability of the rules. Thus, Rules 101(c) and (d) have been written to incorporate the provisions of former Criminal Rule 1101 and that rule is omitted.

RULE 102. PURPOSE AND CONSTRUCTION

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

RULE 103. RULINGS ON EVIDENCE

(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) *Objection.* In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context. When the court hears objections to offered evidence out of the presence of the jury and rules that such evidence be admitted, such objections shall be deemed to apply to such evidence when it is admitted before the jury without the necessity of repeating those objections.

(2) *Offer of proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer, or was apparent from the context within which questions were asked.

(b) Record of Offer and Ruling. The offering party shall, as soon as practicable, but before the court's charge is read to the jury, be allowed to make, in the absence of the jury, its offer of proof. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. The court may, or at the request of a party shall, direct the making of an offer in question and answer form.

(c) Hearing of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) Fundamental Error in Criminal Cases. In a criminal case, nothing in these rules precludes taking notice of fundamental errors affecting substantial rights although they were not brought to the attention of the court.

Notes and Comments

Comment to 1998 change. The exception to the requirement of an offer of proof for matters that were apparent from the context within which questions were asked, found in paragraph (a)(2), is now applicable to civil as well as criminal cases.

RULE 104. PRELIMINARY QUESTIONS

(a) Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be

determined by the court, subject to the provisions of subdivision (b). In making its determination the court is not bound by the rules of evidence except those with respect to privileges.

(b) **Relevancy Conditioned on Fact.** When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) **Hearing of Jury.** In a criminal case, a hearing on the admissibility of a confession shall be conducted out of the hearing of the jury. All other civil or criminal hearings on preliminary matters shall be conducted out of the hearing of the jury when the interests of justice so require or in a criminal case when an accused is a witness and so requests.

(d) **Testimony by Accused Out of the Hearing of the Jury.** The accused in a criminal case does not, by testifying upon a preliminary matter out of the hearing of the jury, become subject to cross-examination as to other issues in the case.

(e) **Weight and Credibility.** This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

RULE 105. LIMITED ADMISSIBILITY

(a) **Limiting Instruction.** When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly; but, in the absence of such request the court's action in admitting such evidence without limitation shall not be a ground for complaint on appeal.

(b) **Offering Evidence for Limited Purpose.** When evidence referred to in paragraph (a) is excluded, such exclusion shall not be a ground for complaint on appeal unless the proponent expressly offers the evidence for its limited, admissible purpose or limits its offer to the party against whom it is admissible.

RULE 106. REMAINDER OF OR RELATED WRITINGS OR RECORDED STATEMENTS

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may at that time introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it. "Writing or recorded statement" includes depositions.

RULE 107. RULE OF OPTIONAL COMPLETENESS

When part of an act, declaration, conversation, writing or recorded statement is given in evidence by one party, the whole on the same subject may be inquired into by the other, and any other act, declaration, writing or recorded statement which is necessary to make it fully understood or to explain the same may also be given in evidence, as when a letter is read, all letters on the same subject between the same parties may be given. "Writing or recorded statement" includes depositions.

Notes and Comments

Comment to 1998 change: This rule is the former Criminal Rule 107 except that the example regarding "when a letter is read" has been relocated in the rule so as to more accurately indicate the provision it explains. While this rule appeared only in the prior criminal rules, it is made applicable to civil cases because it accurately reflects the common law rule of optional completeness in civil cases.

ARTICLE II. JUDICIAL NOTICE

RULE 201. JUDICIAL NOTICE OF ADJUDICATIVE FACTS

(a) Scope of Rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When Discretionary. A court may take judicial notice, whether requested or not.

(d) When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to Be Heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing Jury. In civil cases, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In criminal cases, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

RULE 202. DETERMINATION OF LAW OF OTHER STATES

A court upon its own motion may, or upon the motion of a party shall, take judicial notice of the constitutions, public statutes, rules, regulations, ordinances, court decisions, and common law of every other state, territory, or jurisdiction of the United States. A party requesting that judicial notice be taken of such matter shall furnish the court sufficient information to enable it properly to comply with the request, and shall give all parties such notice, if any, as the court may deem necessary, to enable all parties fairly to prepare to meet the request. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken. Judicial notice of such matters may be taken at any stage of the proceeding. The court's determination shall be subject to review as a ruling on a question of law.

RULE 203. DETERMINATION OF THE LAWS OF FOREIGN COUNTRIES

A party who intends to raise an issue concerning the law of a foreign country shall give notice in the pleadings or other reasonable written notice, and at least 30 days prior to the date of trial such party shall furnish all parties copies of any written materials or sources that the party intends to use as proof of the foreign law. If the materials or sources were originally written in a language other than English, the party intending to rely upon them shall furnish all parties both a copy of the foreign language text and an English translation. The court, in determining the law of a foreign nation, may consider any material or source, whether or not submitted by a party or admissible under the rules of evidence, including but not limited to affidavits, testimony, briefs, and treatises. If the court considers sources other than those submitted by a party, it shall give all parties notice and a reasonable opportunity to comment on the

sources and to submit further materials for review by the court. The court, and not a jury, shall determine the laws of foreign countries. The court's determination shall be subject to review as a ruling on a question of law.

RULE 204. DETERMINATION OF TEXAS CITY AND COUNTY ORDINANCES, THE CONTENTS OF THE TEXAS REGISTER, AND THE RULES OF AGENCIES PUBLISHED IN THE ADMINISTRATIVE CODE

A court upon its own motion may, or upon the motion of a party shall, take judicial notice of the ordinances of municipalities and counties of Texas, of the contents of the Texas Register, and of the codified rules of the agencies published in the Administrative Code. Any party requesting that judicial notice be taken of such matter shall furnish the court sufficient information to enable it properly to comply with the request, and shall give all parties such notice, if any, as the court may deem necessary, to enable all parties fairly to prepare to meet the request. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken. The court's determination shall be subject to review as a ruling on a question of law.

ARTICLE III. PRESUMPTIONS

[No rules adopted at this time.]

ARTICLE IV. RELEVANCY AND ITS LIMITS

RULE 401. DEFINITION OF "RELEVANT EVIDENCE"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

RULE 402. RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE

All relevant evidence is admissible, except as otherwise provided by Constitution, by statute, by these rules, or by other rules prescribed pursuant to statutory authority. Evidence which is not relevant is inadmissible.

RULE 403. EXCLUSION OF RELEVANT EVIDENCE ON SPECIAL GROUNDS

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence.

RULE 404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES

(a) Character Evidence Generally. Evidence of a person's character or character trait is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) *Character of accused.* Evidence of a pertinent character trait offered:

(A) by an accused in a criminal case, or by the prosecution to rebut the same, or

(B) by a party accused in a civil case of conduct involving moral turpitude, or by the accusing party to rebut the same;

(2) *Character of victim.* In a criminal case and subject to Rule 412, evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of peaceable character of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor; or in a civil case, evidence of character for violence of the alleged victim of assaultive conduct offered on the issue of self-defense by a party accused of the assaultive conduct, or evidence of peaceable character to rebut the same;

(3) *Character of witness.* Evidence of the character of a witness, as provided in rules 607, 608 and 609.

(b) Other Crimes, Wrongs or Acts. Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon timely request by the accused in a criminal case, reasonable notice is given in advance of trial of intent to introduce in the State's case-in-chief such evidence other than that arising in the same transaction.

RULE 405. METHODS OF PROVING CHARACTER

(a) Reputation or Opinion. In all cases in which evidence of a person's character or character trait is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. In a criminal case, to be qualified to testify at the guilt stage of trial concerning the character or character trait of an accused, a witness must have been familiar with the reputation, or with the underlying facts or information upon which the opinion is based, prior to the day of the offense. In all cases where testimony is admitted under this rule, on cross-examination inquiry is allowable into relevant specific instances of conduct.

(b) Specific Instances of Conduct. In cases in which a person's character or character trait is an essential element of a charge, claim or defense, proof may also be made of specific instances of that person's conduct.

RULE 406. HABIT; ROUTINE PRACTICE

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

RULE 407. SUBSEQUENT REMEDIAL MEASURES; NOTIFICATION OF DEFECT

(a) Subsequent Remedial Measures. When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent remedial measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent remedial measures when offered for another purpose, such as proving ownership, control or feasibility of precautionary measures, if controverted, or impeachment. Nothing in this rule shall preclude admissibility in products liability cases based on strict liability.

(b) Notification of Defect. A written notification by a manufacturer of any defect in a product produced by such manufacturer to purchasers thereof is admissible against the manufacturer on the issue of existence of the defect to the extent that it is relevant.

RULE 408. COMPROMISE AND OFFERS TO COMPROMISE

Evidence of (1) furnishing or offering or promising to furnish or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice or interest of a witness or a party, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

RULE 409. PAYMENT OF MEDICAL AND SIMILAR EXPENSES

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

RULE 410. INADMISSIBILITY OF PLEAS, PLEA DISCUSSIONS AND RELATED STATEMENTS

Except as otherwise provided in this rule, evidence of the following is not admissible against the defendant who made the plea or was a participant in the plea discussions:

(1) a plea of guilty that was later withdrawn;

(2) in civil cases, a plea of *nolo contendere,* and in criminal cases, a plea of *nolo contendere* that was later withdrawn;

(3) any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding, in a civil case, either a plea of guilty that was later withdrawn or a plea of *nolo contendere,* or in a criminal case, either a plea of guilty that was later withdrawn or a plea of *nolo contendere* that was later withdrawn; or

(4) any statement made in the course of plea discussions with an attorney for the prosecuting authority that does not result in a plea of guilty or a plea of *nolo contendere* or that results in a plea, later withdrawn, of guilty or *nolo contendere.*

However, such a statement is admissible in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it.

RULE 411. LIABILITY INSURANCE

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another issue, such as proof of agency, ownership, or control, if disputed, or bias or prejudice of a witness.

RULE 412. EVIDENCE OF PREVIOUS SEXUAL CONDUCT IN CRIMINAL CASES

(a) Reputation or Opinion Evidence. In a prosecution for sexual assault or aggravated sexual assault, or attempt to commit sexual assault or aggravated sexual assault, reputation or opinion evidence of the past sexual behavior of an alleged victim of such crime is not admissible.

(b) Evidence of Specific Instances. In a prosecution for sexual assault or aggravated sexual assault, or attempt to commit sexual assault or aggravated sexual assault, evidence of specific instances of an alleged victim's past sexual behavior is also not admissible, unless:

(1) such evidence is admitted in accordance with paragraphs (c) and (d) of this rule;

(2) it is evidence:

(A) that is necessary to rebut or explain scientific or medical evidence offered by the State;

(B) of past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior which is the basis of the offense charged;

(C) that relates to the motive or bias of the alleged victim;

(D) is admissible under Rule 609; or

(E) that is constitutionally required to be admitted; and

(3) its probative value outweighs the danger of unfair prejudice.

(c) Procedure for Offering Evidence. If the defendant proposes to introduce any documentary evidence or to ask any question, either by direct examination or cross-examination of any witness, concerning specific instances of the alleged victim's past sexual behavior, the defendant must inform the court out of the hearing of the jury prior to introducing any such evidence or asking any such question. After this notice, the court shall conduct an in camera hearing, recorded by the court reporter, to determine whether the proposed evidence is admissible under paragraph (b) of this rule. The court shall determine what evidence is admissible and shall accordingly limit the questioning. The defendant shall not go outside these limits or refer to any evidence ruled inadmissible in camera without prior approval of the court without the presence of the jury.

(d) Record Sealed. The court shall seal the record of the in camera hearing required in paragraph (c) of this rule for delivery to the appellate court in the event of an appeal.

(e) Sexual Conduct of Child as Defense. This rule does not limit the right of the accused to produce evidence of promiscuous sexual conduct of a child 14 years old or older as a defense to sexual assault, aggravated sexual assault, indecency with a child or an attempt to commit any of the foregoing crimes. If such evidence is admitted, the court shall instruct the jury as to the purpose of the evidence and as to its limited use.

ARTICLE V. PRIVILEGES

RULE 501. PRIVILEGES RECOGNIZED ONLY AS PROVIDED

Except as otherwise provided by Constitution, by statute, by these rules, or by other rules prescribed pursuant to statutory authority, no person has a privilege to:

(1) refuse to be a witness;
(2) refuse to disclose any matter;

(3) refuse to produce any object or writing; or

(4) prevent another from being a witness or disclosing any matter or producing any object or writing.

RULE 502. REQUIRED REPORTS PRIVILEGED BY STATUTE

A person, corporation, association, or other organization or entity, either public or private, making a return or report required by law to be made has a privilege to refuse to disclose and to prevent any other person from disclosing the return or report, if the law requiring it to be made so provides. A public officer or agency to whom a return or report is required by law to be made has a privilege to refuse to disclose the return or report if the law requiring it to be made so provides. No privilege exists under this rule in actions involving perjury, false statements, fraud in the return or report, or other failure to comply with the law in question.

RULE 503. LAWYER-CLIENT PRIVILEGE

(a) **Definitions.** As used in this rule:

(1) A "client" is a person, public officer, or corporation, association, or other organization or entity either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from that lawyer.

(2) A "representative of the client" is:

(A) a person having authority to obtain professional legal services, or to act on advice thereby rendered, on behalf of the client, or

(B) any other person who, for the purpose of effectuating legal representation for the client, makes or receives a confidential communi-cation while acting in the scope of employment for the client.

(3) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law in any state or nation.

(4) A "representative of the lawyer" is:

(A) one employed by the lawyer to assist the lawyer in the rendition of professional legal services; or

(B) an accountant who is reasonably necessary for the lawyer's rendition of professional legal services.

(5) A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(b) Rules of Privilege.

(1) *General rule of privilege.* A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;

(B) between the lawyer and the lawyer's representative;

(C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

(E) among lawyers and their representatives representing the same client.

(2) *Special rule of privilege in criminal cases.* In criminal cases, a client has a privilege to prevent the lawyer or lawyer's representative from disclosing any other fact which came to the knowledge of the lawyer or the lawyer's representative by reason of the attorney-client relationship.

(c) Who May Claim the Privilege. The privilege may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer or the lawyer's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

(d) Exceptions. There is no privilege under this rule:

(1) *Furtherance of crime or fraud.* If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

(2) *Claimants through same deceased client.* As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by *inter vivos* transactions;

(3) *Breach of duty by a lawyer or client.* As to a communication relevant to an issue of breach of duty by a lawyer to the client or by a client to the lawyer;

(4) *Document attested by a lawyer.* As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or

(5) *Joint clients.* As to a communication relevant to a matter of common interest between or among two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between or among any of the clients.

Notes and Comments

Comment to 1998 change: The addition of subsection (a)(2)(B) adopts a subject matter test for the privilege of an entity, in place of the control group test previously used. See *National Tank Co. v. Brotherton*, 851 S.W.2d 193, 197-198 (Tex. 1993).

RULE 504. HUSBAND-WIFE PRIVILEGES

(a) Confidential Communication Privilege.

(1) *Definition.* A communication is confidential if it is made privately by any person to the person's spouse and it is not intended for disclosure to any other person.

(2) *Rule of privilege.* A person, whether or not a party, or the guardian or representative of an incompetent or deceased person, has a privilege during marriage and afterwards to refuse to disclose and to prevent another from disclosing a confidential communication made to the person's spouse while they were married.

(3) *Who may claim the privilege.* The confidential communication privilege may be claimed by the person or the person's guardian or representative, or by the spouse on the person's behalf. The authority of the spouse to do so is presumed.

(4) *Exceptions.* There is no confidential communication privilege:

(A) *Furtherance of crime or fraud.* If the communication was made, in whole or in part, to enable or aid anyone to commit or plan to commit a crime or fraud.

(B) *Proceeding between spouses in civil cases.* In (A) a proceeding brought by or on behalf of one spouse against the other spouse, or (B) a proceeding between a surviving spouse and a person who claims through the deceased spouse, regardless of whether the claim is by testate or intestate succession or by *inter vivos* transaction.

(C) *Crime against spouse or minor child.* In a proceeding in which the party is accused of conduct which, if proved, is a crime against the person of the spouse, any minor child, or any member of the household of either spouse.

(D) *Commitment or similar proceeding.* In a proceeding to commit either spouse or otherwise to place that person or that person's property, or both, under the control of another because of an alleged mental or physical condition.

(E) *Proceeding to establish competence.* In a proceeding brought by or on behalf of either spouse to establish competence.

(b) Privilege not to Testify in Criminal Case.

(1) *Rule of privilege.* In a criminal case, the spouse of the accused has a privilege not to be called as a witness for the state. This rule does not prohibit the spouse from testifying voluntarily for

the state, even over objection by the accused. A spouse who testifies on behalf of an accused is subject to cross-examination as provided in rule 611(b).

(2) *Failure to call as witness.* Failure by an accused to call the accused's spouse as a witness, where other evidence indicates that the spouse could testify to relevant matters, is a proper subject of comment by counsel.

(3) *Who may claim the privilege.* The privilege not to testify may be claimed by the person or the person's guardian or representative but not by that person's spouse.

(4) *Exceptions.* The privilege of a person's spouse not to be called as a witness for the state does not apply:

(A) *Certain criminal proceedings.* In any proceeding in which the person is charged with a crime against the person's spouse, a member of the household of either spouse, or any minor.

(B) *Matters occurring prior to marriage.* As to matters occurring prior to the marriage.

Notes and Comments

Comment to 1998 change: The rule eliminates the spousal testimonial privilege for prosecutions in which the testifying spouse is the alleged victim of a crime by the accused. This is intended to be consistent with Code of Criminal Procedure article 38.10, effective September 1, 1995.

RULE 505. COMMUNICATIONS TO MEMBERS OF THE CLERGY

(a) Definitions. As used in this rule:

(1) A "member of the clergy" is a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious organization or an individual reasonably believed so to be by the person consulting with such individual.

(2) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General Rule of Privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy in the member's professional character as spiritual adviser.

(c) Who May Claim the Privilege. The privilege may be claimed by the person, by the person's guardian or conservator, or by the personal representative of the person if the person is deceased. The member of the clergy to whom the communication was made is presumed to have authority to claim the privilege but only on behalf of the communicant.

RULE 506. POLITICAL VOTE

Every person has a privilege to refuse to disclose the tenor of the person's vote at a political election conducted by secret ballot unless the vote was cast illegally.

RULE 507. TRADE SECRETS

A person has a privilege, which may be claimed by the person or the person's agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the judge shall take such protective measure as the interests of the holder of the privilege and of the parties and the furtherance of justice may require.

RULE 508. IDENTITY OF INFORMER

(a) Rule of Privilege. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) Who May Claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished, except the privilege shall not be allowed in criminal cases if the state objects.

(c) Exceptions.

(1) *Voluntary disclosure; informer a witness.* No privilege exists under this rule if the identity of the informer or the informer's interest in the subject matter of the communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the public entity.

(2) *Testimony on merits.* If it appears from the evidence in the case or from other showing by a party that an informer may be able to give testimony necessary to a fair determination of a material issue on the merits in a civil case to which the public entity is a party, or on guilt or innocence in a criminal case, and the public entity invokes the privilege, the court shall give the public entity an opportunity to show in camera facts relevant to determining whether the informer can, in fact, supply that testimony. The showing will ordinarily be in the form of affidavits, but the court may direct that testimony be taken if it finds that the matter cannot be resolved satisfactorily upon affidavit. If the court finds that there is a reasonable probability that the informer can give the testimony, and the public entity elects not to disclose the informer's identity, the court in a civil case may make any order that justice requires, and in a criminal case shall, on motion of the defendant, and may, on the court's own motion, dismiss the charges as to which the testimony would relate. Evidence submitted to the court shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the public entity. All counsel and parties shall be permitted to be present at every stage of proceedings under this subdivision except a showing in camera, at which no counsel or party shall be permitted to be present.

(3) *Legality of obtaining evidence.* If information from an informer is relied upon to establish the legality of the means by which evidence was obtained and the court is not satisfied that the information was received from an informer reasonably believed to be reliable or credible, it may require the identity of the informer to be disclosed. The court shall, on request of the public entity, direct that the disclosure be made in camera. All counsel and parties concerned with the issue of legality shall be permitted to be present at every stage of proceedings under this subdivision except a disclosure in camera, at which no counsel or party shall be permitted to be present. If disclosure of the identity of the informer is made in camera, the record thereof shall be sealed and preserved to be made available to the appellate court in the event

of an appeal, and the contents shall not otherwise be revealed without consent of the public entity.

RULE 509. PHYSICIAN-PATIENT PRIVILEGE

(a) Definitions. As used in this rule:

(1) A "patient" means any person who consults or is seen by a physician to receive medical care.

(2) A "physician" means a person licensed to practice medicine in any state or nation, or reasonably believed by the patient so to be.

(3) A communication is "confidential" if not intended to be disclosed to third persons other than those present to further the interest of the patient in the consultation, examination, or interview, or those reasonably necessary for the transmission of the communication, or those who are participating in the diagnosis and treatment under the direction of the physician, including members of the patient's family.

(b) Limited Privilege in Criminal Proceedings. There is no physician-patient privilege in criminal proceedings. However, a communication to any person involved in the treatment or examination of alcohol or drug abuse by a person being treated voluntarily or being examined for admission to treatment for alcohol or drug abuse is not admissible in a criminal proceeding.

(c) General Rule of Privilege in Civil Proceedings. In a civil proceeding:

(1) Confidential communications between a physician and a patient, relative to or in connection with any professional services rendered by a physician to the patient are privileged and may not be disclosed.

(2) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed.

(3) The provisions of this rule apply even if the patient received the services of a physician prior to the enactment of the Medical Liability and Insurance Improvement Act, TEX. REV. CIV. STAT. art. 4590i.

(d) Who May Claim the Privilege in a Civil Proceeding. In a civil proceeding:

(1) The privilege of confidentiality may be claimed by the patient or by a representative of the patient acting on the patient's behalf.

(2) The physician may claim the privilege of confidentiality, but only on behalf of the patient. The authority to do so is presumed in the absence of evidence to the contrary.

(e) Exceptions in a Civil Proceeding. Exceptions to confidentiality or privilege in administrative proceedings or in civil proceedings in court exist:

(1) when the proceedings are brought by the patient against a physician, including but not limited to malpractice proceedings, and in any license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claims or defense of a physician;

(2) when the patient or someone authorized to act on the patient's behalf submits a written consent to the release of any privileged information, as provided in paragraph (f);

(3) when the purpose of the proceedings is to substantiate and collect on a claim for medical services rendered to the patient;

(4) as to a communication or record relevant to an issue of the physical, mental or emotional condition of a patient in any proceeding in which any party relies upon the condition as a part of the party's claim or defense;

(5) in any disciplinary investigation or proceeding of a physician conducted under or pursuant to the Medical Practice Act, TEX. REV. CIV. STAT. art. 4495b, or of a registered nurse under or pursuant to TEX. REV. CIV. STAT. arts. 4525, 4527a, 4527b, and 4527c, provided that the board shall protect the identity of any patient whose medical records are examined, except for those patients covered under subparagraph (e)(1) or those patients who have submitted written consent to the release of their medical records as provided by paragraph (f);

(6) in an involuntary civil commitment proceeding, proceeding for court-ordered treatment, or probable cause hearing under the Texas Mental Health Code, TEX. HEALTH & SAFETY CODE ch. 462; tit. 7, subtit. C; subtit. D.

(7) in any proceeding regarding the abuse or neglect, or the cause of any abuse or neglect, of the resident of an "institution" as defined in TEX. HEALTH & SAFETY CODE §242.002.

(f) Consent.

(1) Consent for the release of privileged information must be in writing and signed by the patient, or a parent or legal guardian if the patient is a minor, or a legal guardian if the patient has been adjudicated incompetent to manage personal affairs, or an attorney ad litem appointed for the patient, as authorized by the Texas Mental Health Code, TEX. HEALTH & SAFETY CODE tit. 7, subtits. C and D; Chapter V, Texas Probate Code; and TEX. FAM. CODE §107.011; or a personal representative if the patient is deceased, provided that the written consent specifies the following:

(A) the information or medical records to be covered by the release;

(B) the reasons or purposes for the release; and

(C) the person to whom the information is to be released.

(2) The patient, or other person authorized to consent, has the right to withdraw consent to the release of any information. Withdrawal of consent does not affect any information disclosed prior to the written notice of the withdrawal.

(3) Any person who received information made privileged by this rule may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release the information was obtained.

Notes and Comments

Comment to 1998 change: This comment is intended to inform the construction and application of this rule. Prior Criminal Rules of Evidence 509 and 510 are now in subparagraph (b) of this Rule. This rule governs disclosures of patient-physician communications only in judicial or administrative proceedings. Whether a physician may or must disclose such communications in other circumstances is governed by TEX. REV. CIV. STAT. ANN. art 4495b, sec. 5.08. Former subparagraph (d)(6) of the Civil Evidence Rules, regarding disclosures in a suit affecting the parent-child relationship, is omitted, not because there should be no exception to the privilege in suits affecting the parent-child relationship, but because the exception in such suits is properly considered under subparagraph (e)(4) of the new rule (formerly subparagraph (d)(4)), as construed in *R.K. v. Ramirez*, 887 S.W.2d 836 (Tex. 1994). In determining the proper application of an exception in such suits, the trial court must ensure that the precise need for the information is not outweighed by legitimate privacy interests protected by the privilege. Subparagraph (e) of the new rule does not except from the privilege information relating to a nonparty patient who is or may be a consulting or testifying expert in the suit.

RULE 510. CONFIDENTIALITY OF MENTAL HEALTH INFORMATION IN CIVIL CASES

(a) Definitions. As used in this rule:

(1) "Professional" means any person:

(A) authorized to practice medicine in any state or nation;

(B) licensed or certified by the State of Texas in the diagnosis, evaluation or treatment of any mental or emotional disorder;

(C) involved in the treatment or examination of drug abusers; or
(D) reasonably believed by the patient to be included in any of the preceding categories.

(2) "Patient" means any person who:

(A) consults, or is interviewed by, a professional for purposes of diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism and drug addiction; or

(B) is being treated voluntarily or being examined for admission to voluntary treatment for drug abuse.

(3) A representative of the patient is:

(A) any person bearing the written consent of the patient;

(B) a parent if the patient is a minor;

(C) a guardian if the patient has been adjudicated incompetent to manage the patient's personal affairs; or

(D) the patient's personal representative if the patient is deceased.

(4) A communication is "confidential" if not intended to be disclosed to third persons other than those present to further the interest of the patient in the diagnosis, examination, evaluation, or

treatment, or those reasonably necessary for the transmission of the communication, or those who are participating in the diagnosis, examination, evaluation, or treatment under the direction of the professional, including members of the patient's family.

(b) General Rule of Privilege.

(1) Communication between a patient and a professional is confidential and shall not be disclosed in civil cases.

(2) Records of the identity, diagnosis, evaluation, or treatment of a patient which are created or maintained by a professional are confidential and shall not be disclosed in civil cases.

(3) Any person who received information from confidential communications or records as defined herein, other than a representative of the patient acting on the patient's behalf, shall not disclose in civil cases the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

(4) The provisions of this rule apply even if the patient received the services of a professional prior to the enactment of TEX. REV. CIV. STAT. art. 5561h (Vernon Supp. 1984)(now codified as TEX. HEALTH & SAFETY CODE §611.001-611.008).

(c) Who May Claim the Privilege.

(1) The privilege of confidentiality may be claimed by the patient or by a representative of the patient acting on the patient's behalf.

(2) The professional may claim the privilege of confidentiality but only on behalf of the patient. The authority to do so is presumed in the absence of evidence to the contrary.

(d) Exceptions. Exceptions to the privilege in court or administrative proceedings exist:

(1) when the proceedings are brought by the patient against a professional, including but not limited to malpractice proceedings, and in any license revocation proceedings in which the patient is a complaining witness and in which disclosure is relevant to the claim or defense of a professional;

(2) when the patient waives the right in writing to the privilege of confidentiality of any information, or when a representative of the patient acting on the patient's behalf submits a written waiver to the confidentiality privilege;

(3) when the purpose of the proceeding is to substantiate and collect on a claim for mental or emotional health services rendered to the patient;

(4) when the judge finds that the patient after having been previously informed that communications would not be privileged, has made communications to a professional in the course of a court-ordered examination relating to the patient's mental or emotional condition or disorder, providing that such communications shall not be privileged only with respect to issues involving the patient's mental or emotional health. On granting of the order, the court, in determining the extent to which any disclosure of all or any part of any communication is necessary, shall impose appropriate safeguards against unauthorized disclosure;

(5) as to a communication or record relevant to an issue of the physical, mental or emotional condition of a patient in any proceeding in which any party relies upon the condition as a part of the party's claim or defense;
(6) in any proceeding regarding the abuse or neglect, or the cause of any abuse or neglect, of the resident of an institution as defined in TEX. HEALTH AND SAFETY CODE §242.002.

Notes and Comments

Comment to 1998 change: This comment is intended to inform the construction and application of this rule. This rule only governs disclosures of patient-professional communications in judicial or administrative proceedings. Whether a professional may or must disclose such communications in other circumstances is governed by TEX. HEALTH & SAFETY CODE sec. 611.001-611.008. Former paragraph (d)(6) of the Civil Evidence Rules, regarding disclosures in a suit affecting the parent-child relationship, is omitted, not because there should be no exception to the privilege in suits affecting the parent-child relationship, but because the exception in such suits is properly considered under subparagraph (d)(5), as construed in *R.K. v. Ramirez*, 887 S.W.2d 836 (Tex. 1994). In determining the proper application of an exception in such suits, the trial court must ensure that the precise need for the information is not outweighed by legitimate privacy interests protected by the privilege. Subparagraph (d) does not except from the privilege information relating to a nonparty patient who is or may be a consulting or testifying expert in the suit.

RULE 511. WAIVER OF PRIVILEGE BY VOLUNTARY DISCLOSURE

A person upon whom these rules confer a privilege against disclosure waives the privilege if:

(1) the person or a predecessor of the person while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter unless such disclosure itself is privileged; or

(2) the person or a representative of the person calls a person to whom privileged communications have been made to testify as to the person's character or character trait insofar as such communications are relevant to such character or character trait.

RULE 512. PRIVILEGED MATTER DISCLOSED UNDER COMPULSION OR WITHOUT OPPORTUNITY TO CLAIM PRIVILEGE

A claim of privilege is not defeated by a disclosure which was (1) compelled erroneously or (2) made without opportunity to claim the privilege.

RULE 513. COMMENT UPON OR INFERENCE FROM CLAIM OF PRIVILEGE; INSTRUCTION

(a) Comment or Inference Not Permitted. Except as permitted in Rule 504(b)(2), the claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel, and no inference may be drawn therefrom.

(b) Claiming Privilege Without Knowledge of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

(c) Claim of Privilege Against Self-Incrimination in Civil Cases. Paragraphs (a) and (b) shall not apply with respect to a party's claim, in the present civil proceeding, of the privilege against self-incrimination.

(d) Jury Instruction. Except as provided in Rule 504(b)(2) and in paragraph (c) of this Rule, upon request any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

Notes and Comments

Comment to 1998 change. Subdivision (d) regarding a party's entitlement to a jury instruction about a claim of privilege is made applicable to civil cases.

ARTICLE VI. WITNESSES

RULE 601. COMPETENCY AND INCOMPETENCY OF WITNESSES

(a) General Rule. Every person is competent to be a witness except as otherwise provided in these rules. The following witnesses shall be incompetent to testify in any proceeding subject to these rules:

(1) *Insane persons.* Insane persons who, in the opinion of the court, are in an insane condition of mind at the time when they are offered as a witness, or who, in the opinion of the court, were in that condition when the events happened of which they are called to testify.

(2) *Children.* Children or other persons who, after being examined by the court, appear not to possess
sufficient intellect to relate transactions with respect to which they are interrogated.

(b) "Dead Man Rule" in Civil Actions. In civil actions by or against executors, administrators, or guardians, in which judgment may be rendered for or against them as such, neither party shall be allowed to testify against the others as to any oral statement by the testator, intestate or ward, unless that testimony to the oral statement is corroborated or unless the witness is called at the trial to testify thereto by the opposite party; and, the provisions of this article shall extend to and include all actions by or against the heirs or legal representatives of a decedent based in whole or in part on such oral statement. Except for the foregoing, a witness is not precluded from giving evidence of or concerning any transaction with, any conversations with, any admissions of, or statement by, a deceased or insane party or person merely because the witness is a party to the action or a person interested in the event thereof. The trial court shall, in a proper case, where this rule prohibits an interested party or witness from testifying, instruct the jury that such person is not permitted by the law to give evidence relating to any oral statement by the deceased or ward unless the oral statement is corroborated or unless the party or witness is called at the trial by the opposite party.

RULE 602. LACK OF PERSONAL KNOWLEDGE

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

RULE 603. OATH OR AFFIRMATION

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

RULE 604. INTERPRETERS

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.

RULE 605. COMPETENCY OF JUDGE AS A WITNESS

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the
point.

RULE 606. COMPETENCY OF JUROR AS A WITNESS

(a) At the Trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting as a juror. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry Into Validity of Verdict or Indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the jury's deliberations, or on any juror's mind or emotions or mental processes, as influencing any juror's assent to or dissent from the verdict or indictment. Nor may a juror's affidavit or any statement by a juror concerning any matter about which the juror would be precluded from testifying be admitted in evidence for any of these purposes. However, a juror may testify: (1) whether any outside influence was improperly brought to bear upon any juror; or (2) to rebut a claim that the juror was not qualified to serve.

RULE 607. WHO MAY IMPEACH

The credibility of a witness may be attacked by any party, including the party calling the witness.

RULE 608. EVIDENCE OF CHARACTER AND CONDUCT OF A WITNESS

(a) Opinion and Reputation Evidence of Character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:

(1) the evidence may refer only to character for truthfulness or untruthfulness; and

(2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be inquired into on cross-examination of the witness nor proved by extrinsic evidence.

RULE 609. IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME

(a) General Rule. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record but only if the crime was a felony or involved moral turpitude, regardless of punishment, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to a party.

(b) **Time Limit.** Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

(c) **Effect of Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible under this rule if:

(1) based on the finding of the rehabilitation of the person convicted, the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure, and that person has not been convicted of a subsequent crime which was classified as a felony or involved moral turpitude, regardless of punishment;

(2) probation has been satisfactorily completed for the crime for which the person was convicted, and that person has not been convicted of a subsequent crime which was classified as a felony or involved moral turpitude, regardless of punishment; or

(3) based on a finding of innocence, the conviction has been the subject of a pardon, annulment, or other equivalent procedure.

(d) **Juvenile Adjudications.** Evidence of juvenile adjudications is not admissible, except for proceedings conducted pursuant to Title III, Family Code, in which the witness is a party, under this rule unless required to be admitted by the Constitution of the United States or Texas.

(e) **Pendency of Appeal.** Pendency of an appeal renders evidence of a conviction inadmissible.

(f) **Notice.** Evidence of a conviction is not admissible if after timely written request by the adverse party specifying the witness or witnesses, the proponent fails to give to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

RULE 610. RELIGIOUS BELIEFS OR OPINIONS

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

Notes and Comments

Comment to 1998 change: This is prior Rule of Criminal Evidence 615.

RULE 611. MODE AND ORDER OF INTERROGATION AND PRESENTATION

(a) **Control by Court.** The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) **Scope of Cross-Examination.** A witness may be cross-examined on any matter relevant to any issue in the case, including credibility.

(c) **Leading Questions.** Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the testimony of the witness. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

RULE 612. WRITING USED TO REFRESH MEMORY

If a witness uses a writing to refresh memory for the purpose of testifying either

(1) while testifying;

(2) before testifying, in civil cases, if the court in its discretion determines it is necessary in the interests of justice; or

(3) before testifying, in criminal cases;

an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portion not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

RULE 613. PRIOR STATEMENTS OF WITNESSES: IMPEACHMENT AND SUPPORT

(a) **Examining Witness Concerning Prior Inconsistent Statement.** In examining a witness concerning a prior inconsistent statement made by the witness, whether oral or written, and before further cross-examination concerning, or extrinsic evidence of such statement may be allowed, the witness must be told the contents of such statement and the time and place and the person to whom it was made, and must be afforded an opportunity to explain or deny such statement. If written, the writing need not be shown to the witness at that time, but on request the same shall be shown to opposing counsel. If the witness unequivocally admits having made such statement, extrinsic evidence of same shall not be admitted. This provision does not apply to admissions of a party-opponent as defined in Rule 801(e)(2).

(b) **Examining Witness Concerning Bias or Interest.** In impeaching a witness by proof of circumstances or statements showing bias or interest on the part of such witness, and before further cross-examination concerning, or extrinsic evidence of, such bias or interest may be allowed, the circumstances supporting such claim or the details of such statement, including the contents and where, when and to whom made, must be made known to the witness, and the witness must be given an opportunity to explain or to deny such circumstances or statement. If written, the writing need not be shown to the witness at that time, but on request the same shall be shown to opposing counsel. If the witness unequivocally admits such bias or interest, extrinsic evidence of same shall not be admitted. A party shall be permitted to present evidence rebutting any evidence impeaching one of said party's witnesses on grounds of bias or interest.

(c) **Prior Consistent Statements of Witnesses.** A prior statement of a witness which is consistent with the testimony of the witness is inadmissible except as provided in Rule 801(e)(1)(B).

RULE 614. EXCLUSION OF WITNESSES

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of:

(1) a party who is a natural person or in civil cases the spouse of such natural person;

(2) an officer or employee of a party in a civil case or a defendant in a criminal case that is not a natural person designated as its representative by its attorney;

(3) a person whose presence is shown by a party to be essential to the presentation of the party's cause; or

(4) the victim in a criminal case, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial.

RULE 615. PRODUCTION OF STATEMENTS OF WITNESSES IN CRIMINAL CASES

(a) Motion for Production. After a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, shall order the attorney for the state or the defendant and defendant's attorney, as the case may be, to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter concerning which the witness has testified.

(b) Production of Entire Statement. If the entire contents of the statement relate to the subject matter concerning which the witness has testified, the court shall order that the statement be delivered to the moving party.

(c) Production of Excised Statement. If the other party claims that the statement contains matter that does not relate to the subject matter concerning which the witness has testified, the court shall order that it be delivered to the court in camera. Upon inspection, the court shall excise the portions of the statement that do not relate to the subject matter concerning which the witness has testified, and shall order that the statement, with such material excised, be delivered to the moving party. Any portion withheld over objection shall be preserved and made available to the appellate court in the event of appeal.

(d) Recess for Examination of Statement. Upon delivery of the statement to the moving party, the court, upon application of that party, shall recess proceedings in the trial for a reasonable examination of such statement and for preparation for its use in the trial.

(e) Sanction for Failure to Produce Statement. If the other party elects not to comply with an order to deliver a statement to the moving party, the court shall order that the testimony of the witness be stricken from the record and that the trial proceed, or, if it is the attorney for the state who elects not to comply, shall declare a mistrial if required by the interest of justice.

(f) Definition. As used in this rule, a "statement" of a witness means:

(1) a written statement made by the witness that is signed or otherwise adopted or approved by the witness;

(2) a substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and that is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof; or

(3) a statement, however taken or recorded, or a transcription thereof, made by the witness to a grand jury.

Notes and Comments

Comment to 1998 change: This is prior Texas Rule of Criminal Evidence 614.

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

RULE 701. OPINION TESTIMONY BY LAY WITNESSES

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

RULE 702. TESTIMONY BY EXPERTS

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

RULE 703. BASES OF OPINION TESTIMONY BY EXPERTS

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by, reviewed by, or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Notes and Comments

Comment to 1998 change: The former Civil Rule referred to facts or data "perceived by or reviewed by" the expert. The former Criminal rule referred to facts or data "perceived by or made known to" the expert. The terminology is now conformed , but no change in meaning is intended.

RULE 704. OPINION ON ULTIMATE ISSUE

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

RULE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

(a) **Disclosure of Facts or Data.** The expert may testify in terms of opinion or inference and give the expert's reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event disclose on direct examination, or be required to disclose on cross-examination, the underlying facts or data.

(b) **Voir dire.** Prior to the expert giving the expert's opinion or disclosing the underlying facts or data, a party against whom the opinion is offered upon request in a criminal case shall, or in a civil case may, be permitted to conduct a *voir dire* examination directed to the underlying facts or data upon which the opinion is based. This examination shall be conducted out of the hearing of the jury.

(c) **Admissibility of opinion.** If the court determines that the underlying facts or data do not provide a sufficient basis for the expert's opinion under Rule 702 or 703, the opinion is inadmissible.

(d) **Balancing test; limiting instructions.** When the underlying facts or data would be inadmissible in evidence, the court shall exclude the underlying facts or data if the danger that they will be used for a purpose other than as explanation or support for the expert's opinion outweighs their value as explanation or support or are unfairly prejudicial. If otherwise inadmissible facts or data are disclosed before the jury, a limiting instruction by the court shall be given upon request.

Notes and Comments

Comment to 1998 change: Paragraphs (b), (c), and (d) are based on the former Criminal Rule and are made applicable to civil cases. This rule does not preclude a party in any case from conducting a *voir dire* examination into the qualifications of an expert.

RULE 706. AUDIT IN CIVIL CASES

Despite any other evidence rule to the contrary, verified reports of auditors prepared pursuant to Rule of Civil Procedure 172, whether in the form of summaries, opinions, or otherwise, shall be admitted in evidence when offered by any party whether or not the facts or data in the reports are otherwise admissible and whether or not the reports embrace the ultimate issues to be decided by the trier of fact. Where exceptions to the reports have been filed, a party may contradict the reports by evidence supporting the exceptions.

ARTICLE VIII. HEARSAY

RULE 801. DEFINITIONS

The following definitions apply under this article:

(a) **Statement.** A "statement" is (1) an oral or written verbal expression or (2) nonverbal conduct of a person, if it is intended by the person as a substitute for verbal expression.

(b) **Declarant.** A "declarant" is a person who makes a statement

(c) **Matter Asserted.** "Matter asserted" includes any matter explicitly asserted, and any matter implied by a statement, if the probative value of the statement as offered flows from declarant's belief as to the matter.

(d) **Hearsay.** "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(e) **Statements Which Are Not Hearsay.** A statement is not hearsay if:

(1) *Prior statement by witness.* The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

(A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding except a grand jury proceeding in a criminal case, or in a deposition;

(B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive;

(C) one of identification of a person made after perceiving the person; or

(D) taken and offered in a criminal case in accordance with Code of Criminal Procedure article 38.071.

(2) *Admission by party-opponent.* The statement is offered against a party and is:

(A) the party's own statement in either an individual or representative capacity;

(B) a statement of which the party has manifested an adoption or belief in its truth;

(C) a statement by a person authorized by the party to make a statement concerning the subject;

(D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship; or

(E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

(3) *Depositions.* In a civil case, it is a deposition taken in the same proceeding, as same proceeding is defined in Rule of Civil Procedure 207. Unavailability of deponent is not a requirement for admissibility.

RULE 802. HEARSAY RULE

Hearsay is not admissible except as provided by statute or these rules or by other rules prescribed pursuant to statutory authority. Inadmissible hearsay admitted without objection shall not be denied probative value merely because it is hearsay.

RULE 803. HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present Sense Impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited Utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for Purposes of Medical Diagnosis or Treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) **Recorded Recollection.** A memorandum or record concerning a matter about which a witness once had personal knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly, unless the circumstances of preparation cast doubt on the document's trustworthiness. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) **Records of Regularly Conducted Activity.** A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by affidavit that complies with Rule 902(10), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. "Business" as used in this paragraph includes any and every kind of regular organized activity whether conducted for profit or not.

(7) **Absence of Entry in Records Kept in Accordance With the Provisions of Paragraph (6).** Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) **Public Records and Reports.** Records, reports, statements, or data compilations, in any form, of public offices or agencies setting forth:

(A) the activities of the office or agency;

(B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding in criminal cases matters observed by police officers and other law enforcement personnel; or

(C) in civil cases as to any party and in criminal cases as against the state, factual findings resulting from an investigation made pursuant to authority granted by law;

unless the sources of information or other circumstances indicate lack of trustworthiness.

(9) **Records of Vital Statistics.** Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) **Absence of Public Record or Entry.** To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report statement, or data compilation, or entry.

(11) **Records of Religious Organizations.** Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) **Marriage, Baptismal, and Similar Certificates.** Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a member of the clergy, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) **Family Records.** Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) **Records of Documents Affecting an Interest in Property.** The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) **Statements in Documents Affecting an Interest in Property.** A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) **Statements in Ancient Documents.** Statements in a document in existence twenty years or more the authenticity of which is established.

(17) **Market Reports, Commercial Publications.** Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) **Learned Treatises.** To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) **Reputation Concerning Personal or Family History.** Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

(20) **Reputation Concerning Boundaries or General History.** Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

(21) **Reputation as to Character.** Reputation of a person's character among associates or in the community.

(22) **Judgment of Previous Conviction.** In civil cases, evidence of a judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), judging a person guilty of a felony, to prove any fact essential to sustain the judgment of conviction. In criminal cases, evidence of a judgment, entered after a trial or upon a plea of guilty or nolo contendere, adjudging a person guilty of a criminal offense, to prove any fact essential to sustain the judgment of conviction, but not including, when offered by the state for purposes other than impeachment,

judgments against persons other than the accused. In all cases, the pendency of an appeal renders such evidence inadmissible.

(23) Judgment as to Personal, Family, or General History, or Boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(24) Statement Against Interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, or to make the declarant an object of hatred, ridicule, or disgrace, that a reasonable person in declarant's position would not have made the statement unless believing it to be true. In criminal cases, a statement tending to expose the declarant to criminal liability is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

RULE 804. HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE

(a) Definition of Unavailability. "Unavailability as a witness" includes situations in which the declarant:

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;

(3) testifies to a lack of memory of the subject matter of the declarant's statement;

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance or testimony by process or other reasonable means.

A declarant is not unavailable as a witness if the declarant's exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrong-doing of the proponent of the declarant's statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay Exceptions. The following are not excluded if the declarant is unavailable as a witness:

(1) *Former testimony.* In civil cases, testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in the course of another proceeding, if the party against whom the testimony is now offered, or a person with a similar interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. In criminal cases, testimony given as a witness at another hearing of the same or a different proceeding, if the party against whom the testimony is now offered had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. In criminal cases the use of depositions is controlled by Chapter 39 of the Code of Criminal Procedure.

(2) *Dying declarations.* A statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

(3) *Statement of personal or family history.*

(A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history even though declarant had no means of acquiring personal knowledge of the matter stated; or

(B) A statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

RULE 805. HEARSAY WITHIN HEARSAY

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

RULE 806. ATTACKING AND SUPPORTING CREDIBILITY OF DECLARANT

When a hearsay statement, or a statement defined in Rule 801(e)(2) (C), (D), or (E), or in civil cases a statement defined in Rule 801(e)(3), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, offered to impeach the declarant, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

RULE 901. REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION

(a) General Provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) *Testimony of witness with knowledge.* Testimony that a matter is what it is claimed to be.

(2) *Nonexpert opinion on handwriting.* Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) *Comparison by trier or expert witness.* Comparison by the trier of fact or by expert witness with specimens which have been found by the court to be genuine.

(4) *Distinctive characteristics and the like.* Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) *Voice identification.* Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at anytime under circumstances connecting it with the alleged speaker.

(6) *Telephone conversations.* Telephone conversa-tions, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if:

(A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called; or

(B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) *Public records or reports.* Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) *Ancient documents or data compilation.* Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence twenty years or more at the time it is offered.

(9) *Process or system.* Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) *Methods provided by statute or rule.* Any method of authentication or identification provided by statute or by other rule prescribed pursuant to statutory authority.

RULE 902. SELF-AUTHENTICATION

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) Domestic Public Documents Under Seal. A document bearing a seal purporting to be that of the United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) Domestic Public Documents Not Under Seal. A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) Foreign Public Documents. A document purporting to be executed or attested in an official capacity by a person, authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification. The final certification shall be dispensed with whenever both the United States and

the foreign country in which the official record is located are parties to a treaty or convention that abolishes or displaces such requirement, in which case the record and the attestation shall be certified by the means provided in the treaty or convention.

(4) Certified Copies of Public Records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2) or (3) of this rule or complying with any statute or other rule prescribed pursuant to statutory authority.

(5) Official Publications. Books, pamphlets, or other publications purporting to be issued by public authority.

(6) Newspapers and Periodicals. Printed materials purporting to be newspapers or periodicals.

(7) Trade Inscriptions and the Like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) Acknowledged Documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) Commercial Paper and Related Documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) Business Records Accompanied by Affidavit.

(a) *Records or photocopies; admissibility; affidavit; filing.* Any record or set of records or photographically reproduced copies of such records, which would be admissible under Rule 803(6) or (7) shall be admissible in evidence in any court in this state upon the affidavit of the person who would otherwise provide the prerequisites of Rule 803(6) or (7), that such records attached to such affidavit were in fact so kept as required by Rule 803(6) or (7), provided further, that such record or records along with such affidavit are filed with the clerk of the court for inclusion with the papers in the cause in which the record or records are sought to be used as evidence at least fourteen days prior to the day upon which trial of said cause commences, and provided the other parties to said cause are given prompt notice by the party filing same of the filing of such record or records and affidavit, which notice shall identify the name and employer, if any, of the person making the affidavit and such records shall be made available to the counsel for other parties to the action or litigation for inspection and copying. The expense for copying shall be borne by the party, parties or persons who desire copies and not by the party or parties who file the records and serve notice of said filing, in compliance with this rule. Notice shall be deemed to have been promptly given if it is served in the manner contemplated by Rule of Civil Procedure 21a fourteen days prior to commencement of trial in said cause.

(b) *Form of affidavit.* A form for the affidavit of such person as shall make such affidavit as is permitted in paragraph (a) above shall be sufficient if it follows this form though this form shall not be exclusive, and an affidavit which substantially complies with the provisions of this rule shall suffice, to-wit:

No _____

John Doe (Name of Plaintiff)	§	IN THE _____
	§	COURT IN AND FOR
v.	§	_____ COUNTY
John Roe (Name of Defendant)	§	TEXAS

AFFIDAVIT

Before me, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

My name is _____, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the custodian of the records of _____. Attached hereto are _____ pages of records from _____. These said ____ pages of records are kept by _____ in the regular course of business, and it was the regular course of business of _____ for an employee or representative of _____, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original.

_____
Affiant

SWORN TO AND SUBSCRIBED before me on the _____ day of _____, 19 ____.

_____
Notary Public, State of Texas

Notary's printed name:

_____

My commission expires: _____

(11) Presumptions Under Statutes or Other Rules. Any signature, document, or other matter declared by statute or by other rules prescribed pursuant to statutory authority to be presumptively or prima facie genuine or authentic.

RULE 903. SUBSCRIBING WITNESS' TESTIMONY UNNECESSARY

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

RULE 1001. DEFINITIONS

For purposes of this article the following definitions are applicable:

(a) **Writings and Recordings.** "Writings" and "recordings" consist of letters, words, or numbers or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(b) **Photographs.** "Photographs" include still photographs, X-ray films, video tapes, and motion pictures.

(c) **Original.** An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."

(d) **Duplicate.** A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.

RULE 1002. REQUIREMENT OF ORIGINALS

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required except as otherwise provided in these rules or by law.

RULE 1003. ADMISSIBILITY OF DUPLICATES

A duplicate is admissible to the same extent as an original unless (1) a question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

RULE 1004. ADMISSIBILITY OF OTHER EVIDENCE OF CONTENTS

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

(a) **Originals Lost or Destroyed.** All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith;

(b) **Original Not Obtainable.** No original can be obtained by any available judicial process or procedure;

(c) **Original Outside the State.** No original is located in Texas;

(d) **Original in Possession of Opponent.** At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the content would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or

(e) **Collateral Matters.** The writing, recording or photograph is not closely related to a controlling issue.

RULE 1005. PUBLIC RECORDS

The contents of an official record or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

RULE 1006. SUMMARIES

The contents of voluminous writings, recordings, or photographs, otherwise admissible, which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.

RULE 1007. TESTIMONY OR WRITTEN ADMISSION OF PARTY

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.

RULE 1008. FUNCTIONS OF COURT AND JURY

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Rule 104. However, when an issue is raised (a) whether the asserted writing ever existed, or (b) whether another writing, recording, or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

RULE 1009. TRANSLATION OF FOREIGN LANGUAGE DOCUMENTS

(a) **Translations.** A translation of foreign language documents shall be admissible upon the affidavit of a qualified translator setting forth the qualifications of the translator and certifying that the translation is fair and accurate. Such affidavit, along with the translation and the underlying foreign language documents, shall be served upon all parties at least 45 days prior to the date of trial.

(b) **Objections.** Any party may object to the accuracy of another party's translation by pointing out the specific inaccuracies of the translation and by stating with specificity what the objecting party contends is a fair and accurate translation. Such objection shall be served upon all parties at least 15 days prior to the date of trial.

(c) **Effect of Failure to Object or Offer Conflicting Translation.** If no conflicting translation or objection is timely served, the court shall admit a translation submitted under paragraph (a) without need of proof, provided however that the underlying foreign language documents are otherwise admissible under the Texas Rules of Evidence. Failure to serve a conflicting translation under paragraph (a) or failure to timely and properly object to the accuracy of a translation under paragraph (b) shall preclude a party from attacking or offering evidence contradicting the accuracy of such translation at trial.

(d) **Effect of Objections or Conflicting Translations.** In the event of conflicting translations under paragraph (a) or if objections to another party's translation are served under paragraph (b), the court shall determine whether there is a genuine issue as to the accuracy of a material part of the translation to be resolved by the trier of fact.

(e) **Expert Testimony of Translator.** Except as provided in paragraph (c), this Rule does not preclude the admission of a translation of foreign language documents at trial either by live testimony or by deposition testimony of a qualified expert translator.

(f) **Varying of Time Limits.** The court, upon motion of any party and for good cause shown, may enlarge or shorten the time limits set forth in this Rule.

(g) **Court Appointment.** The court, if necessary, may appoint a qualified translator, the reasonable value of whose services shall be taxed as court costs.

Notes and Comments

Comment to 1998 change. This is a new rule.

TMCEC NOTE

Article XI — Miscellaneous Provisions and Rule 1101 — Applicability of Rules are omitted. Rule 1101 dealt with the same subject matter as Rule 101. Therefore, in an effort to avoid redundancy, the provisions of Rule 1101 were incorporated into the "new" Rule 101. See Notes and Comments that follow Rule 101. ☆

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Article

*1301 STUPID JUDGE TRICKS

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I. What Are Stupid Judge Tricks?

There is a folder next to my desk labeled "Stupid Judge Tricks." I throw case reports and newspaper stories into it as I come across them, and eventually use them to update various sections of **Judicial** Conduct and **Ethics.** [FN1] I empty the file every summer, having incorporated the important cases and grown tired of the rest. I do not keep the clippings from year to year simply because the process of treatise revision--replete with cutting, pasting, underlining, note-taking, marginal scribbling, and exasperated paper crumpling--pretty much destroys the source material as I work.

But now I wish I had saved all of those files. It's not because the cases are timeless--believe me, they aren't. And it's not because the information has been completely lost--the significant cases can be found through the topic headings in the index to the treatise. And it's not because the file contains a coherent body of organized case law--it is never more than a jumble of cases and reports that defy categorization and need to be distributed from chapter to chapter in order to be of any use.

No, I wish I had saved them because I am starting to think that a survey of "stupid judge tricks" might be helpful to our understanding of a little- discussed subject that could be called "judicial hubris." Fortunately, this thought came to me shortly before I was ready to discard the most recent year's worth of entries, so I have retained sufficient data to allow us at least to initiate some speculation about the cause of stupid judge tricks.

***1302** A "stupid judge trick" is something more than a simple incident of misconduct. It is a judicial or quasi-judicial act that causes you to scratch your head in wonderment and exclaim, "What could that judge have possibly been thinking?" It is an action by a person who, though seemingly aware that he or she is being perceived as a judge, nonetheless ignores or flouts all of the conventions inherent in the office. Thus, our category excludes such objectionable, but ultimately nonjudicial, activities such as drug-dealing, [FN2] indecent exposure and soliciting, [FN3] punching a litigant, [FN4] and ethnic slurs coupled with untruthful denials. [FN5] That behavior is plenty bad, but it could pretty much afflict anyone. Thus, while these are undeniably "stupid tricks," for present purposes they are insufficiently judge-like. For the obverse reason, we also exclude egregiously bad judicial rulings, such as

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entering guilty pleas on the records of defendants who had pled not guilty, [FN6] dismissing criminal cases before hearing from the prosecution, [FN7] and entering judgment without holding trial. [FN8] These "decisions" may be so fundamentally wrong as to warrant discipline, but they are at least efforts at judging--hence, I hesitate to call them "tricks."

Having resolved the definitional question, let's get down to cases. Why do some judges behave so scandalously? Is there something about the job of judging that encourages outrageous acts? Are there shortcomings in the Code of Judicial Conduct, or is there an absence of judicial education, so that judges do not understand what is expected of them? Or are we merely seeing a manifestation of the law of large numbers--put enough judges in enough courtrooms and eventually someone will go off every imaginable deep end? [FN9]

*1303 II. Some Examples of Stupid Judge Tricks

Let us begin with some stories reported in the past year or so. These cases are not exactly drawn at random, given that nearly all of them come out of state disciplinary systems. On the other hand, they are also not an accurate sample of judicial conduct, since only a small minority of sitting judges ever face discipline in the first place. Even within that minimal group, it is fortuitous that these particular cases happened to come to my attention during a twelve month period while my folder was "open." As will soon become apparent, the cases cannot readily be organized or categorized other than perhaps by their glaring audacity. Nonetheless, I present them below in the more or less accidental order in which they have fallen from my file. [FN10] I will try to make some sense of them in Section III.

In Fletcher v. Commission on Judicial Performance, the judge was removed from office for numerous incidents of misconduct, including ex parte communications and abuse of his authority. [FN11] In at least two cases, Judge Thomas Fletcher apparently suggested that litigants attend his bible study classes while their matters were still pending before him. [FN12] In the context of the bible classes, though the judge never disqualified himself from their cases, the judge counseled the defendants on personal aspects of their lives. [FN13]

In an unrelated situation, typical of other misconduct charged against him, Judge Fletcher expressed his displeasure when a female attorney was not present at a scheduled hearing. [FN14] Said the judge, "she probably has something more important to do today, like go to a PTA meeting. She has a whole bunch of kids. She's been having kids ever since I've known her." [FN15]

In re Davis illustrates a case in which the judge was removed from office primarily in consequence of his inappropriate financial dealings. [FN16] Judge Gary Davis regularly borrowed money from court *1304 employees and often did not repay the loans, sometimes occasioning written demands for payment. [FN17] He directed court employees to provide Spanish translations for customers to his mother's nursery business. [FN18] Most astonishingly, he conducted a personal business from his chambers, displaying antiques throughout the courthouse and offering them for sale. [FN19] He used jail trustees to set up the displays, and court employees to drive him on shopping trips in search of antiques. [FN20]

Finally, Judge Davis adopted a practice of instructing defendants to make charitable contributions in lieu of paying fines, directing both the amount to be contributed and the recipient of the funds. [FN21] In this manner, he diverted a total of over $400,000 from the city treasury to his favored charities. [FN22]

The judge in In re Baldwin likewise misused his chambers, though not for financial gain. [FN23] While the jury was deliberating in a drunk driving case, Judge Baldwin left the courthouse and returned with a twelve-pack of beer, sharing it with both the prosecutor and defense counsel. [FN24] Following the jury's verdict of guilty, the judge--still on the bench in his robe, and in the presence of the recently-convicted defendant--invited the jurors to join with him in drinking the beer. [FN25] Stated Judge Baldwin, "I know this is uncommon, and kind of funny following a DUI case. I'll deny it if any of you repeat it." [FN26] Though two jurors joined the party, the others, evidently more judicious than the judge, declined. [FN27] By stipulation, Judge Baldwin accepted censure and resigned from the bench. [FN28]

*1305 In Louisiana, Judge James Best did not just tempt a few jurors with beer, but rather sought, in a bench trial,

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to empanel all of the courtroom spectators as an ad hoc jury in a battery case in which the defendant represented himself pro se. [FN29] At the conclusion of the evidence, the judge turned to the audience and said, "If you think I ought to find him not guilty [sic] for two counts of battery on a woman, stand up." [FN30] Next, he asked, "If you think I ought to find him guilty, [sic] stand up." [FN31] The record did not indicate that anyone stood up either time, but Judge Best proceeded to find the defendant guilty. [FN32] Judge Best was censured by the Louisiana Supreme Court, which noted that his conduct had undermined public respect for the judiciary. [FN33]

The judge in In re Roberts presided over cases involving domestic battery and theft. [FN34] Nonetheless, he commented to his clerk that "every woman needs a good pounding now and then." [FN35] As an aside, he also ordered a woman to an eighty-nine day jail stay because she could not afford to pay an eighty-five dollar fine. [FN36]

The judge's comments in Roberts, however, were relatively mild compared to the statements of Nebraska judge, Richard Jones, who was removed from office after making death threats against one judge ***1306** and setting off fireworks in another judge's chambers. [FN37] Jones repeatedly used profanity when referring to other judges, within hearing range of court personnel, lawyers, and bystanders. [FN38] In particular, he called one female judge a "fucking ass," a "bitch," and a "fucking cunt." [FN39] He frequently talked about committing acts of violence against her, including turning her head into "pink mist" and putting dynamite in the tailpipe of her car. [FN40] Judge Jones also signed court forms and orders with names other than his own, including Adolph Hitler, SnowWhite, and Mickey Mouse, a practice that he attempted to justify in the name of humor. [FN41]

Sexual harassment by judges is a recurring problem, and the case of Mississippi Commission on Judicial Performance v. Spencer is fairly typical. [FN42] Judge Howard Junior "Buster" Spencer consistently made improper sexual suggestions to female court staff, once commenting that he was tempted to buy a pair of "small red panties" for a clerk, [FN43] and on another occasion offering to wash the blue jeans of a female staff person if she would "take them off right [then]." [FN44] A clerk testified that the judge once came over to her desk carrying a stress ball and asked her if she would "like to squeeze his balls" while he looked down at his crotch and laughed. [FN45]

Departing briefly from the intentional lack of organization of this inventory, I cannot resist at this point mentioning In re Collazo, in which the judge was removed from office for suggesting to a female law intern that she remove her clothing in his presence, and thereafter ***1307** giving false statements under oath. [FN46] Sounds familiar, doesn't it--except for the part about removal from office?

The judge in In re Ross had written a book titled I, Jesse James. [FN47] He kept copies of the book in chambers, using his bailiff to offer it for sale to lawyers and others. [FN48] During one trial, the bailiff sold copies of the book to the participating attorneys, and at least one of the jurors became aware that counsel had purchased a book. [FN49] The bailiff also passed the book among jurors in the jury box. [FN50] Judge Ross discussed his book with jurors in open court, offering to autograph any copies purchased. [FN51]

California judge, George Trammell, was censured for having a four-month sexual relationship with a woman whom he had sentenced to probation, and for continuing to preside over cases involving her co-defendants, including her ex- husband. [FN52] Judge Trammell resigned from the bench within days of learning that his conduct was being investigated. [FN53] Before resigning, however, without notice to counsel, he modified the conditions of the woman's probation. [FN54]

Also in California, Judge Gregory Caskey was publicly admonished for sending the following e-mail to an attorney:

I am considering summarily rejecting [opposing counsel's] requests. Do you want me to let [opposing counsel] have a hearing on this, or do we cut [opposing counsel] off summarily and run the risk [of] the [Third District Court of Appeals] revers[ing]? . . . I say screw [the other party] and let's cut [opposing counsel] off without a hearing. O.K.? By the way, this message will self-destruct in five seconds. [FN55]

The recipient of the judge's message replied as follows: "Your honor, I don't feel comfortable responding ex-parte [sic] on how you should rule on a pending case." [FN56] By return e-mail, Judge Caskey sent ***1308** a one word response, stating, "chicken." [FN57]

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Finally, Louisiana judge, Sharah Harris, made the list by indulging in a sixteen-month-long romantic liaison with a convicted felon, Rodney Jones, whom she had sentenced to prison for armed robbery. [FN58] In the judge's defense, she did not begin dating the man until after he was released from jail, but he remained on parole--and therefore under legal supervision--during the time of their extra-marital affair. [FN59] As their relationship came to an end, the parolee went on a "crime spree" committing various crimes such as car theft, burglary, and three armed robberies, which resulted in his return to prison. [FN60] Apparently, their attachment was quite public, as it became known to the judge's then-husband who reported it to law enforcement authorities. [FN61] The affair was also the subject of a lengthy newspaper report. [FN62] The Louisiana Supreme Court suspended Judge Harris for sixty days without pay, [FN63] declining to impose a harsher sanction in view of her genuine remorse and the fact that "[her] relationship [with Jones] had significantly diminished by the time Jones initiated his crime spree in 1996." [FN64]

III. The Reasons for Stupid Judge Tricks

Pointillism is more a form of expression than a method of analysis. By stepping back from the seemingly disordered picture, and by consciously unfocusing our gaze, we may see a pattern emerge that had previously eluded us. Viewed as a whole, what can we say, either descriptively or normatively, about stupid judge tricks? Why do they happen and is there any way that they can be discouraged or restrained?

One is initially tempted to attribute stupid judge tricks to, well, stupidity. What else would motivate an otherwise rational jurist to risk loss of dignity, esteem, and career over such senseless or fatuous behavior?

But stupidity is too easy an excuse. First, most of the conduct under discussion was extended or repeated, and for that reason it cannot be explained as a momentary lapse in judgment. Moreover, ***1309** not every stupid judge trick leads to removal from office, though a judge who was really so slow- witted as not to realize that it is wrong to serve alcohol to jurors, or peddle books or antiques in his courtroom, ought never to wear a robe again. Ultimately, the defense of stupidity is a rationalization that seeks absolution--saying in effect, "I don't know why I behaved that way. It was really stupid." But that is no answer at all, and it should not satisfy either judges or their critics.

Other possible explanations might be viewed as arrogance, hubris, or chutzpah. For reasons of personality or temperament, the judge is simply out of control. Each characterization seems plausible, though difficult to address or rectify other than in specific cases. With tens-of-thousands of active judges in the United States, surely some will exhibit at least one of virtually every negative personality trait--including arrogance, egotism, presumptuousness, vanity, pomposity, imprudence, and lewdness. We can be vigilant, of course, watching for such judges and taking action when necessary, but on that basis, a systemic solution still eludes us.

What good does it do, for example, to observe that we are destined to encounter a certain number of judges who are idiosyncratically disposed to engage in sexual misconduct? Consider the cases from last year. Judges Spencer [FN65] and Collazo [FN66] indulged in coarse harassment of their staffs, which they (the judges, not the staffs) no doubt regarded as humorous rather than oppressive. Judge Trammell, on the other hand, exploited a vulnerable defendant while simultaneously compromising the integrity of his judicial duties. [FN67] Judge Harris, in contrast, appears to have ventured into a reciprocal, though astonishingly ill-advised, relationship. [FN68] Viewed merely in the context of defective character, these situations would have little in common. The actual conduct ranged from suggestive speech, to coerced sex, to mutual attraction. Spencer and Collazo were loudmouthed louts, Trammel was extortionate, Harris was perhaps promiscuous. And in this sort of isolation, the cases have even less in common with asking spectators to vote on whether a defendant is guilty [FN69] or sending ex parte e-mail messages to counsel. [FN70]

***1310** Let us therefore take one further step back and look at the overall picture. Perhaps we can yet comprehend the phenomenon at a useful level of generality. Allow me to suggest the overarching presence of a unifying principle that has not previously been identified in the literature on **judicial ethics.** What I see in operation when I appraise stupid judge tricks in the broadest possible perspective, is an over-active sense of entitlement, verging on self-attributed invulnerability. The judges conduct themselves as though they believe they can do no wrong, as though their office confers upon them a license to behave as they please without fear of consequences. A few decades ago we probably would have referred to this as power-tripping, yet the term fits equally well today.

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Indeed, we hear echoes of power-tripping in the responses and statements of several of the judges themselves. Judge Baldwin, who served beer to jurors, clearly delighted in violating accepted norms, at one point boasting to his staff, "[I'll] bet you've never met a judge like me before," and, "I don't play by the rules." [FN71]

Judge Jones signed court orders as Mickey Mouse, Snow White, and Adolph Hitler, which he justified as an exercise that would keep his staff "on their toes." [FN72] He frequently set bond in bizarre amounts, including a fictitious "zillion pengos," which he equated with setting no bond at all. [FN73] Jones is also the judge who repeatedly threatened and demeaned his colleagues, [FN74] set off fireworks in chambers, [FN75] referred to a judicial colleague with an obscene slang term for the female anatomy, [FN76] and falsely claimed on several occasions that she had offered him oral sex. [FN77] To Judge Jones, however, these actions were merely "pranks" of the sort that other judges engaged in as well. [FN78] He further insisted that his insulting treatment of a female judge was motivated by his own frustration at her refusal to attend to her paperwork. [FN79]

In such cases, and I am sure in others, the judges apparently believed that their positions entitled them to act with impunity. Cloaked with great authority for a very specific and limited reason -- *1311 judging cases in furtherance of the public trust--these individuals declined to accept conventional limits on their behavior, essentially insisting on extending their power into other realms as well.

By virtue of the job, judges necessarily get to order other people around. They deserve and should receive deference, but only by virtue of their official position, not by reason of some inherent entitlement. Some judges, however, fail or refuse to recognize the essential separation between the office and the person. The legitimate exercise of power in one context is taken as a license to act without restraint in others; and that leads to stupid judge tricks.

IV. What Can Be Done About Stupid Judge Tricks?

The first, easiest response to stupid judge tricks lies in recognizing it as a syndrome. Rather than discounting episodes of poor behavior as isolated incidents, judicial and other authorities should be alert for the sort of conduct suggesting that a judge is acting with a sense of self-conferred immunity. Judges who do not recognize constraints are likely to repeat and intensify actions of impropriety. In such circumstances, reporting and investigation of impropriety should be expedited, not delayed.

There is a natural tendency, of course, to be hesitant to report judges for perceived misconduct, especially on the part of lawyers who must appear before those very same judges. Precipitous disciplinary action may also threaten judicial independence, although that is not a significant danger in the case of stupid judge tricks. [FN80] In any event, prosecutors, other judges, and disciplinary authorities have less to fear in the way of possible retribution, and should therefore be encouraged to take the lead in focusing the necessary attention on misbehaving judges.

A bad precedent is set when judges are seen as flouting the rules of conduct, a precedent that encourages further misconduct by some and which demoralizes others. Consider, for example, the case of Judge Joseph B. Brown, Jr. of Memphis, Tennessee. [FN81]

Judge Brown, who sits in criminal court and was recently reelected to a second eight-year term, is the eponymous star of Judge Joe Brown, the second- rated show among the many currently popular *1312 programs featuring judges seen on daytime television. [FN82] All of the other televised jurists have either retired from the bench, such as Judge Judy and Judge Mills Lane; or never served in the first place, as in the case of former New York Mayor, Ed Koch. In sharp contract, Judge Brown continues to preside over real cases, while intermittently flying off to Los Angeles to tape his programs. [FN83]

Problems with **court** attendance aside, Brown's conspicuous moonlighting violates at least three of Tennessee's Canons of **Judicial** Conduct. Most clearly, he continues to engage in business dealings that "may reasonably be perceived to exploit the judge's **judicial** position." [FN84] The very title of his show, Judge Joe Brown, exploits his position, as do other features of televised judging. By the same token, his commercial appearances "lend the prestige of **judicial** office to advance the private interests of the judge or others," [FN85] namely his producers and

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sponsors. Finally, the Tennessee Code of **Judicial** Conduct provides that a judge shall not "perform **judicial** functions in a private capacity unless expressly authorized by law." [FN86] Needless to say, no provision of Tennessee law appears expressly to authorize studio judging.

In an interview with the New York Times, Judge Brown defended his conduct as follows:

I am enhancing the public's respect for the courts, which is not as high as it has been. Judges have an obligation to advise the public about the law and judicial procedures and my show does that. Through these shows, the public observes the application of common sense by judicial officials. [FN87]

The rationalization is classic. In Judge Brown's mind, his lucrative second career is actually justified as a service to the judiciary. Public respect for thecourts has fallen, compelling Judge Brown to restore it by flying off to Hollywood in order to demonstrate his "common sense" on daytime television. In other words, Judge Brown quite visibly refuses to recognize the clear limitations set forth in the Code of Judicial Conduct, instead conferring upon himself a license to act as he pleases. Because his motives--as he characterizes them--are admirable, the ordinary rules simply do not apply.

But that is not the worst of it. The citizens of Tennessee can ***1313** survive Joseph Brown's financial exploitation of their public trust. The bigger question is whether the dispensation of justice can survive the pressures of celebrity.

Brown achieved stardom by being a street-smart, no-nonsense judge. His continued success in the ratings war depends on his ability to maintain that same persona. In a sense, Joe Brown can no longer deviate from his script, since he risks losing the audience's favor if he goes soft or gets fooled. Unfortunately, the way he handles his real cases can have an impact on his television contract, since bad publicity or a high-profile controversy could lead to the cancellation of his show. It is hard enough for judges to do the right thing when all they have to do is listen to the evidence and make rulings, but Joseph Brown has the added complication of worrying about his option years and residuals.

In fact, the "real-judge-on-television" syndrome is more corrosive even than that. How many other sitting judges are at this very moment wondering what they can do to become the next Joe Brown? Are the lords of Hollywood (and the masters of niche marketing) looking for an avuncular judge, a funny judge, a prayerful judge, a sexy judge or maybe a poet? Whatever the case, the audition might be today, in a courtroom near you. So heaven help the litigant whose fate is being determined when the talent scouts are in town.

The public, nationally-broadcast nature of Judge Brown's **ethics** violations makes it difficult to understand why he has not faced discipline in Tennessee. Other states have not been so slow to act in somewhat similar circumstances. In recent years, judges in New York [FN88] and New Jersey [FN89] have been ordered to stop acting as television commentators, and an Ohio judge was reprimanded for appearing, though not speaking, in a commercial. [FN90]

The Tennessee Supreme Court, however, has been surprisingly easy on Judge Joe Brown. Though they recently denied his request to have a regular substitute fill in while he is in Los Angeles taping his show, [FN91] there have been no overt efforts to discipline or reprimand him for his plainly impermissible conduct. Perhaps the authorities are hesitant to act because they fear the protests that would surely follow ***1314** if the popular judge were compelled either to resign from the bench or give up his Hollywood career, which might be the most troubling implication of all for the administration of justice. Can fame make a judge virtually impervious to charges of misconduct?

I do not know Judge Brown apart from having watched him on television. I assume that he conducts his real courtroom with **decorum** and integrity. Nonetheless, his apparent immunity sends a dismal signal to others in the judiciary. While Judge Brown's television show is often rather funny and smart, the seeming suspension of the Code of **Judicial** Conduct can only encourage stupid judge tricks by others.

[FNa1]. Professor of Law, Northwestern University.

[FN1]. Jeffrey Shaman, Steven Lubet & James Alfini, **Judicial** Conduct and **Ethics** (3d ed. 2000).

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[FN2]. See Office of Disciplinary Counsel v. Gallagher, 693 N.E.2d 1078, 1078 (Ohio 1998).

[FN3]. See In re Martin, No. CJD 98-06, 2-3 (Maryland Commission on **Judicial** Disabilities, Aug. 19, 1998) (copy on file with author).

[FN4]. See Mississippi Comm'n on Judicial Performance v. Guest, 717 So. 2d 325, 326 (Miss. 1998).

[FN5]. See In re Ferrara, 458 Mich. 350, 352 (Mich. 1998), reh'g granted, 584 N.W.2d 922 (Mich. 1998).

[FN6]. See In re Renfer, 493 S.E.2d 434, 434 (N.C. 1997).

[FN7]. See In re Duckman, 699 N.E.2d 872, 872 (N.Y. 1998); In re Skinner, 690 N.E.2d 484, 485 (N.Y. 1997).

[FN8]. See In re Degenhardt, at 3 (New York Commission on Judicial Conduct, July 27, 1998) (copy on file with author).

[FN9]. The most familiar iteration of this phenomenon involves monkeys and typewriters. Gather together a sufficiently large number of each, it is said, and eventually some simian will peck out the sonnets of Shakespeare.

[FN10]. I have omitted, however, all cases from Texas because it just seemed safer that way. I have also omitted two cases in which I participated as an expert witness.

[FN11]. 968 P.2d 958, 971 (Cal. 1998).

[FN12]. See id. at 971, 974.

[FN13]. See id. at 971-73.

[FN14]. See id. at 963.

[FN15]. Id. The judge made these comments in open court along with other statements such as, "She shouldn't be handling criminal cases.... Here's another example of a civil attorney who shouldn't be handling criminal cases." Id. Before the commission, the judge, although he admitted sending the female attorney a letter of apology, argued that he did not make the statements and that the court reporter probably made them up because of some sort of political vendetta. See id.

[FN16]. 946 P.2d 1033, 1036 (Nev. 1997).

[FN17]. See id. at 1043.

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Feature

*39 COURTROOM ETHICS AND ANTICS INTEGRITY IN ADVOCACY

Hon. Dwight Jefferson [FNa1]

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Introduction

This article will attempt briefly to address the topic of courtroom ethics and the proper conduct of attorneys from the standpoint of promoting integrity in courtroom advocacy. The trial judge has great responsibility for promoting integrity in courtroom advocacy. The most fertile source of unethical or improper behavior on the part of advocates and the judge is improper bias towards the parties or their advocates. Although we would like to believe that our trial process is free from the influence of bias that may affect the outcome of the lawsuit, this is unfortunately not always the case. Bias may manifest itself in numerous ways. It may consist of "internal biases of the listener, the trier of fact or decision maker," or it may be "the by-product of external influences." [FN1] No one is immune from bias, not even the judge. "It is an awesome task to sit in judgment of ones fellow citizens. Judges must be aware of the subtle and non-subtle elements that can besiege objectivity." [FN2]

It is recognized that "judges play a key role in eliminating bias from the judicial system." [FN3] A judge can establish an environment that makes it clear that all parties will be considered equals in the eyes of the law. Under the TEXAS CODE OF JUDICIAL CONDUCT Canon 3B(5) (1997), "a judge shall perform judicial duties without bias or prejudice." Canon 3B(4) further states that "a judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, staff, court officials, and others subject to the judge's direction and control." Furthermore, a judge shall not in the performance of judicial duties manifest, and shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice, including but not limited to bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status against parties, witnesses, counsel or others, and shall not knowingly permit staff, court officials and others subject to the judge's direction and control to do so. [FN4] Moreover, "this requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceeding." [FN5]

The Code of Judicial Conduct further provides that "a judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law," [FN6] and that "a judge shall not initiate, permit, or consider ex parte communications or other communications made to the judge outside the presence of the parties between the judge and a party, an attorney, a guardian or attorney ad litem, an alternative dispute resolution neutral, or any other court appointee concerning the merits of a pending or impending judicial proceeding." [FN7] A judge must require that court personnel comply with this subsection also. [FN8]

Proper and Improper Courtroom Decorum

One of the most common potential problem areas of courtroom ethics and **decorum** is the manner in which lawyers deal with women and ethnic minorities. In order to prevent gender bias from infecting the judicial process, attorneys should avoid first names, and should not engage in joke telling. [FN9] Attorneys should "keep the subject on the business at hand, articulate in a firm, civil courteous and reserved manner, dress appropriately, if compelled

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to address a gender issue, do so with tact, diplomacy and firmness, and avoid any physical contact." [FN10] Some of the same rules that apply to how attorneys address gender issues apply to how they address racial and ethnic issues: keep the subject on the business at hand, be tactful and courteous, be diplomatic yet firm and avoid promoting stereotypes and myths. A lawyer's conduct in the courtroom must be such that it does not frustrate or impair the judicial process.

Under the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT RULE 5.08(a) (1997), as promulgated by the State Bar of Texas, "a lawyer shall not willfully, in connection with an adjudicatory proceeding, except as provided in paragraph (b), manifest, by words or conduct, bias or prejudice based on race, color, national origin, religion, disability, age, sex, or sexual orientation towards any person involved in that proceeding in any capacity." A lawyer representing a client who is a woman, racial or ethnic minority, or economically disadvantaged, should always be aware of the circumstances under which the trial will ***40** take place. The attorney should conduct the trial and discovery with a constant eye for inherent societal biases that might affect the outcome of the trial. It is important for the attorney to define what factors will be present at trial that might allow biases to seep into the trial process. In order to protect against the possibility of biases influencing the trial, the court should restrict and exclude on motions in limine any attempt by the attorneys to belittle or trivialize any of the parties to the lawsuit. [FN11] The attorney representing a client who may be categorized, for whatever reason, by race, gender or economic status should ask the court to limine out such comments or references. The attorney representing such clients must educate the judge to subtle hints that may allow race, gender, economic, or age biases to influence the courtroom setting. [FN12] However, keep in mind that improper bias is not the only conduct that may damage the integrity of the advocacy process, causing it to fall below acceptable ethical standards.

The State Bar of Texas, through its Disciplinary Rules of Professional Conduct, the Texas Supreme Court, through The Texas Lawyer's Creed, and the local bar associations across the state, through their local lawyer creeds and mandates on professionalism, have all attempted to address both the ethical and professional aspects of lawyer conduct and the promoting of integrity and civility in courtroom advocacy. In addition, each district of the federal courts in Texas has also promulgated rules that set forth standards of practice to be observed by attorneys appearing in their court. These rules, mandates and creeds are an attempt by the profession to establish brightline standards for how we as judges and lawyers are to conduct ourselves when dealing with one another and the litigants and witnesses in matters before the courts. As part of this article, I have included portions of some of the above-referenced rules, mandates and creeds. A brief review of these documents provides tremendous guidance to all attorneys and judges on the "do's" and "don'ts" of promoting integrity in advocacy.

Texas Disciplinary Rules of Professional Conduct, 5.08(a):

A lawyer shall not willfully, in connection with an adjudicatory proceeding, except as provided in paragraph (b), manifest, by words or conduct, bias or prejudice based on race, color, national origin, religion, disability, age, sex, or sexual orientation towards any person involved in that proceeding in any capacity.

The Texas Lawyer's Creed Mandate for Professionalism Promulgated by The Supreme Court of Texas and The Court of Criminal Appeals

I am a lawyer; I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that Professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this Creed for no other reason than it is right.

I. Our Legal System

A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism.

1. I am passionately proud of my profession. Therefore, "My word is my bond."

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2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.

3. I commit myself to an adequate and effective pro bono program.

4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.

5. I will always be conscious of my duty to the judicial system.

II. Lawyer to Client

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.

1. I will advise my client of the contents of this Creed when undertaking representation.

2. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible.

3. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.

4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.

5. I will advise my client of proper and expected behavior.

6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse *41 anyone or indulge in any offensive conduct.

7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.

8. I will advise my client that we will not pursue tactics which are intended primarily for delay.

9. I will advise my client that we will not pursue any course of action which is without merit.

10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.

11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

III. Lawyer to Lawyer

A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. Ill feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct.

1. I will be courteous, civil, and prompt in oral and written communications.

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2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.

3. I will identify for other counsel or parties all changes I have made in documents submitted for review.

4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.

5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences, or closings are cancelled.

6. I will agree to reasonable requests for extensions of time and for waiver of procedural **formalities,** provided legitimate objectives of my client will not be adversely affected.

7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.

8. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.

9. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.

10. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.

11. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.

12. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court.

13. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.

14. I will not arbitrarily schedule a deposition, Court appearance, or hearing until a good faith effort has been made to schedule ***42** it by agreement.

15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.

16. I will refrain from excessive and abusive discovery.

17. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.

18. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.

19. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

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IV. Lawyer and Judge

Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

1. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol.

2. I will conduct myself in court in a professional manner and demonstrate my respect for the Court and the law.

3. I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility.

4. I will be punctual.

5. I will not engage in any conduct which offends the dignity and **decorum** of proceedings.

6. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage.

7. I will respect the rulings of the Court.

8. I will give the issues in controversy deliberate, impartial and studied analysis and consideration.

9. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.

Houston Bar Association Professionalism: A Lawyer's Mandate

The conduct of a lawyer should be characterized at all times by honesty, candor, and fairness. In fulfilling his or her primary duty to a client, a lawyer must be ever mindful of the profession's broader duty to the legal system.

I. Relations with Clients

A lawyer owes to a client undivided allegiance, the full application of the lawyer's learning, skill, and industry, and the employment of all appropriate legal means to protect and enforce the client's legitimate rights, claims, and objectives. In the discharge of this duty, a lawyer should not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced directly or indirectly by any considerations or self-interest.

1. Representing my client in a professional manner is my first obligation.

2. I will be loyal and committed to my client's cause, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice to the client.

3. I will endeavor to achieve my client's lawful objectives in business transactions and in litigation as expeditiously and economically as possible.

4. When appropriate, I will counsel my client with respect to mediation, arbitration, and other alternative methods of resolving disputes.

5. I will advise my client against pursuing litigation (or any other course of action) that is without merit and against insisting on tactics which are intended primarily to delay resolution of a matter or to harass or drain financial resources of the opposing party.

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6. A client has no right to demand that I abuse the opposite party or counsel or indulge in other offensive conduct. I will always treat adverse parties and witnesses with fairness and due consideration.

II. Relations with Other Lawyers

A lawyer owes to opposing counsel courtesy, candor, cooperation in all respects not inconsistent with a client's interest, and scrupulous observance of all mutual agreements and understandings. Ill feelings between clients should not influence a lawyer's conduct, attitude, or demeanor toward opposing lawyers.

1. I will be courteous, civil, and prompt in oral and written communications.

2. In litigation procedures, I will agree to reasonable requests for extensions of time and for waiver of procedural **formalities,** provided a legitimate interest of my client will not be adversely affected.

3. I will not serve motions and pleadings at such a time or in such a manner as will unfairly limit the other party's opportunity to respond.

4. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.

5. When scheduled hearings or depositions are canceled, I will notify opposing counsel, and, if appropriate, the Court (or other tribunal) as soon as practicable.

6. In business transactions, I will not quarrel over matters of *43 form or style, but will concentrate on matters of substance.

7. I will identify for other counsel or parties all changes I have made in documents submitted to me for review.

III. Conduct in Court

A lawyer owes to the judiciary respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. A judge has a reciprocal responsibility to maintain the dignity and independence of the Court and to treat the lawyer with courtesy and respect as an officer of the Court.

1. I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law.

2. I will treat opposing counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility.

3. I will advise my client of the behavior expected of him or her.

4. I will be punctual so that preliminary matters may be disposed of in order to start the trial, hearing, or conference on time.

IV. Administration of Justice & Discovery

A lawyer owes to the administration of justice personal dignity, professional integrity, and independence. A lawyer should adhere to the highest principles of professionalism in all dealings with others, regardless of the desires of a client.

1. Ordinarily, I will not give notice of a deposition or hearing until an effort has been made to schedule it by agreement.

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2. In oral depositions and other discovery proceedings, I will treat opposing counsel, opposing parties, and any others present, with courtesy and civility.

3. I will refrain from excessive and abusive discovery, and I will comply with all reasonable discovery requests.

4. I will submit proposed orders to the Court promptly and will send copies to opposing counsel before or contemporaneously with submission to the Court.

5. If the matter does not merit the filing of a motion or an agreed order, I will not unnecessarily involve the Court or its staff with correspondence to opposing counsel.

(Unanimously adopted this 16th day of February, 1989, by the Board of Directors of the Houston Bar Association, on the recommendation of the Special Committee on Professionalism, to encourage all lawyers to observe these standards of professionalism to which the Houston Bar Association wholeheartedly subscribes.)

Conclusion

The local bar associations throughout the State of Texas have expressed a clear commitment to the promotion of ethics and integrity in our profession. This commitment is joined by the State Bar and all the federal courts in Texas. Notwithstanding all of the creeds, mandates and rules, however, we all know that the continuing threats to the integrity of our system of advocacy will not end until lawyers are as committed to that goal as are the leaders of the bar associations and judges in our state and federal courts. I encourage each of you to read and, to the best of your ability, follow these guidelines. The result will be a "kinder, gentler" more civil and professional bar. Surely, there can be no better advertisement for the profession and the system of advocacy which many of us cherish so dearly.

[FNa1]. The Hon. Dwight Jefferson was appointed as judge of the 215th Civil District Court by Gov. George W. Bush in 1995 and was elected to a full term in 1996. He is a 1983 graduate of the University of Texas School of Law. Judge Jefferson served as a member of the Judicial Selection Task Force of the Texas Commission on Judicial Efficiency, and he currently serves as a member of the State Bar of Texas' Judicial Relations Committee.

[FN1]. Anthony P. Griffin, "Handling Bias, Prejudice and Hostile Environments" Z-1 (July 6. 1994) (On file with Professional Development. State Bar of Texas)

[FN2]. Id. at Z-2.

[FN3]. Miscellaneous Docket No. 96-9272: In the Supreme Court of Texas, TEX. B.J., February, 1997, 166 at 170.

[FN4]. Tex. Code Jud. Conduct, Canon 3B(6-7)(1997).

[FN5]. Id.

[FN6]. TEX. CODE JUD. CONDUCT, Canon 3B(8).

[FN7]. Id.

[FN8]. Id.

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[FN9]. The Honorable Carolyn Clause Garcia, "Gender in the Courtroom" 1-6 (March 22, 1996) (on file with Professional Development, State Bar of Texas).

[FN10]. Id.

[FN11]. Griffin at Z-4.

[FN12]. Id.

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