

Texas Municipal Courts Education Center

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AROUND THE STATE

TMCEC GENERAL COUNSEL

Jade Meeker resigned effective January 1, 2000 as the TMCEC General Counsel. Jade left the Center to go into private practice in Austin. She will continue to help the Center with the final revisions of the TMCEC *Bench Book* and the prosecutor programs to be held in March and June, 2000. Jade joined the Center in January 1999, having served as a member of the TMCEC faculty for many years. We wish Jade the best of luck in her future endeavors.

TMCEC is seeking applications for the position of General Counsel. All applicants must be graduates of an accredited law school with a LL.B. or J.D., licensed to practice law in Texas, and have a minimum of two years experience related to municipal courts. Applications will be accepted until the position is filled. Salary is negotiated based on experience and in the range of \$45,000 to \$58,000.

The TMCEC General Counsel's primary responsibility is to provide up-to-date legal information to Texas municipal courts via telephone calls on the 800 line, the TMCEC newsletter and the various TMCEC publications, including the *Bench Book* and the Codebooks (available from Omni Publishers, Bulverde, Texas - 830/438-7110). The General Counsel also coordinates the prosecutor training programs and offers legal advice to the TMCEC

Executive Director and Board of Directors.

Individuals interested in reviewing the job description or obtaining an employment application, should contact Karen Meyers at TMCEC (800/252-3718).

TMCA/TMCEC ELECTION 2000

Beginning March 3, 2000, petitions will be accepted for nominating candidates for the TMCA/TMCEC Officers and the Board of Directors for the September 1, 2000 through August 31, 2001 term.

The following officers will be elected for a one-year term: (1) President-Elect, (2) First Vice-President, (3) Second Vice-President, (4) Secretary, (5) Treasurer.

The even numbered regions (Regions 2, 4, 6, 8, and 10) will elect a representative (Regional Director) to the Board of Directors for a two-year term.

Candidates for officers or regional directors will have their names put on the ballot by submitting a nomination petition signed by twenty (20) TMCA members for an officer position or signed by ten (10) TMCA members for a regional director position. For more information, go to the TMCA website at www.txmca.com or contact Judge Edwin L. Presley, TMCA/TMCEC President, 1218 Cozby Street East, Benbrook, Texas 76126-3602; 817/249-0181; Email: resips@aol.com.

TMCA now has a web site:

www.txmca.com



TMCA/TMCEC FY 1999-2000 OFFICERS AND DIRECTORS

An important resource to municipal court judges and court support personnel is their TMCA/TMCEC regional director or officer. The regional directors are willing to talk with you about:

- Problems that you may have in your court or with your council, and
- Your ideas and suggestions about the TMCEC program.

The following is a list of your fiscal year 1999-2000 officers and directors along with the region that they represent:

President – Judge Edwin L. Presley (817) 249-0181

President-Elect – Judge Glenn Phillips (903) 983-1559

First Vice-President – Judge Joe Pirtle (281) 333-9229

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Past-President – Stella Ortiz Kyle (210) 737-2992

Region I Director – Judge Robert Doty (806) 775-2462

Region II Director – Judge Steve Williamson (817) 871-8671

Region III Director – Judge Mike O'Neal (214) 670-5573

Region IV Director – Judge Patsy Haynes (903) 983-1159

Region V Director – Judge Sharon Hatten (915) 685-7303

Region VI Director – Judge Evelyn McKee (512) 433-4841

Region VII Director – Quentin Porter (210) 207-7710

Region VIII Director – Judge Timothy Fox (713) 798-4999

Region IX Director – Judge Hector M. Hernandez (713) 247-5464

Region X Director – Angel Stallings (361) 749-4538

REGION I – Armstrong, Bailey, Baylor, Borden, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Dawson, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Gaines, Garza, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hockley, Hutchinson, Jones, Kent, King, Knox, Lamb, Lipscomb, Lubbock, Lynn, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Scurry, Shackelford, Sherman, Stone-wall, Swisher, Terry, Throckmorton, Wheeler, Wilbarger, Yoakum

REGION II – Archer, Clay, Comanche, Cooke, Denton, Erath, Hood, Jack, Johnson, Montague, Palo Pinto, Parker, Somervell, Stephens, Tarrant, Wichita, Wise, Young

REGION III – Collin, Dallas, Fannin, Grayson, Hunt, Kaufman, Rockwall

REGION IV – Anderson, Bowie, Camp, Cass, Cherokee, Delta, Franklin, Freestone, Gregg, Harrison, Henderson, Hopkins, Lamar, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Red River, Rusk, Shelby, Smith, Titus, Upshur, Van Zandt, Wood

REGION V – Andrews, Bandera, Brewster, Brown, Callahan, Coke, Coleman, Concho, Crane, Crockett, Culberson, Eastland, Ector,

Edwards, El Paso, Glasscock, Howard, Hudspeth, Irion, Jeff Davis, Kerr, Kimble, Kinney, Loving, Martin, Mason, McCulloch, Medina, Menard, Midland, Mitchell, Nolan, Pecos, Presidio, Reagan, Real, Reeves, Runnels, Schleicher, Sterling, Sutton, Taylor, Terrell, Tom Green, Upton, Uvalde, Val Verde, Ward, Winkler

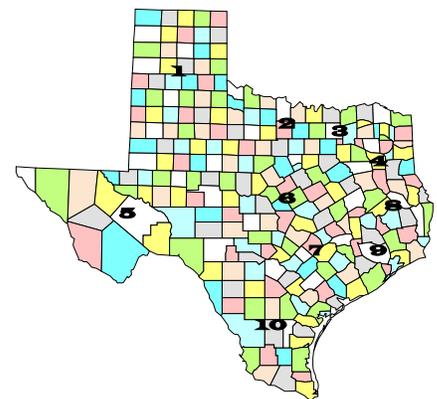
REGION VI – Bell, Bosque, Burnet, Coryell, Ellis, Falls, Hamilton, Hill, Lampasas, Limestone, Llano, McLennan, Milam, Mills, Robertson, San Saba, Travis, Williamson

REGION VII – Austin, Bastrop, Bexar, Blanco, Brazos, Burleson, Caldwell, Colorado, Comal, Fayette, Gillespie, Gonzales, Grimes, Guadalupe, Hays, Kendall, Lavaca, Lee, Walker, Washington, Wilson

REGION VIII – Angelina, Brazoria, Chambers, Galveston, Hardin, Houston, Jasper, Jefferson, Leon, Liberty, Madison, Montgomery, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Waller

REGION IX – Fort Bend, Harris

REGION X – Aransas, Atascosa, Bee, Brooks, Calhoun, Cameron, De Witt, Dimmitt, Duval, Frio, Goliad, Hidalgo, Jackson, Jim Hogg, Jim Wells, Karnes, Kenedy, Kleberg, La Salle, Live Oak, Matagorda, Maverick, McMullen, Nueces, Refugio, San Patricio, Starr, Victoria, Webb, Wharton, Willacy, Zapata, Zavala



added.) While the Court found that Titles 1, 2 and 3 of the Penal Code apply to municipal ordinances (as “other laws”), it held that the term “statute” included only enactments of the Texas Legislature. In short, the Court held that Pasadena could not create a new culpable mental state different than the four mental states of intentionally, knowingly, recklessly, or with criminal negligence.

The Truth

That last point is very important, and this is where the myth has developed. Many people, notably defense attorneys, have skimmed this opinion and claimed that Section 1.03(b) of the Penal Code means that a city cannot eliminate a culpable mental state at all, that only the Legislature can do that; therefore, all city offenses must have a culpable mental state regardless of what the ordinance says. Of course, it never says that anywhere in *Honeycutt*. All *Honeycutt* says is that a city ordinance cannot conflict with the terms of 6.02 of the Texas Penal Code. And what does the relevant portion of 6.02 really say:

If 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.** Tex. Penal Code Sec. 6.02(b) (emphasis added).

In *Honeycutt*, the Court holds that “Sec. 6.02(a) states the general rule: one of the four culpable mental states defined by the Penal Code is an essential element of the offense. The exceptions to the general rule are stated in Sec. 6.02(b) and (c): if the definition of the offense does not include a culpable mental state as required by the general rule, then

intent, knowledge, or recklessness is the applicable mental state unless the definition of the offense clearly dispenses with any mental element, so that no culpable mental state is required.” *Honeycutt*, at 424. To complete the analysis, the Court also rejected the State’s argument that the negligent collision ordinance completely negated the mental element:

The ordinance does not include one of the four culpable mental states in the definition of negligent collision, so the general rule of Sec. 6.02(a) is not satisfied and Sec. 6.02(b) must be consulted. The definition of negligent collision also does not plainly dispense with any culpable mental state, since it does attempt to apply a new culpable mental state not created by the Penal Code. Therefore, under Sec. 6.02(b), a culpable mental state is required, and under Sec. 6.02(c), the minimum required culpability is recklessness. An allegation of simple negligence does not comply with the requirements of Sec. 6.02.

Honeycutt, at 424.

Honeycutt Progeny

Related cases hardly muddy the water. In *Aguirre v. State*, ___ S.W.3d ___, 1999 WL 767794 (Tex. Crim. App. 1999) (en banc) the court overturned a conviction based on El Paso’s ordinance regulating sexually oriented business locations. In the decision, the court held that “[A] culpable mental state is required for the El Paso ordinance, even though it does not prescribe one, unless the definition of the offense plainly dispenses with any mental element.” The footnote to this

line in the opinion explains:

In *Honeycutt v. State*, 627 S.W.2d, at 423-24, we held that the power to define offenses in abrogation of Titles 1, 2 and 3 of the Penal Code, which include the culpable mental state requirements, is reserved to the legislature. Therefore a municipality must comply with Section 6.02 when it prescribes, or dispenses with, a culpable mental state in an offense.

Id at fn 26.

The El Paso conviction was overturned because the ordinance failed to manifest an intent to dispense with the mental element and the complaint did not allege one.

The opinion in *Kaczmarek v. State*, 986 S.W.2d 287 (Tex. App.—Waco, 1999, no pet.) also reflects the proper reading of *Honeycutt*. In it, Houston had made it a Class A misdemeanor to operate a sexually oriented business (SOB) without a permit. Kaczmarek was employed at the time as the manager of La Bare, an adult lounge. When Houston police arrived at La Bare, the establishment had no SOB permit, and they charged Kaczmarek. The Houston ordinance was silent about a culpable mental state, but the information charging Kaczmarek contained mental elements of knowingly and intentionally. He was convicted at trial. On appeal the defendant argued that the ordinance was unconstitutionally vague because it did not require a culpable mental state. In language revealing of the current state of law, and the proper reading of *Honeycutt*, the court overruled the defendant’s point of error and held that, “The Houston Code of Ordinance Section under which Kaczmarek was charged, Section 28-122(a), requires under Section 6.02(b) a culpable mental state unless it is

plainly dispensed with by the ordinance.” *Kaczmarek*, at 293. Again, why would the Waco Court even discuss the possibility of an ordinance dispensing with a culpable mental state if *Honeycutt* stood for the proposition that a city could never dispense with a culpable mental state requirement? The answer is that 1.03 and 6.02 of the Penal Code, along with *Honeycutt*, never stood for that proposition.

In *Pollard v. State*, 687 S.W.2d 373 (Tex. App.—Dallas 1985, pet. ref’d), the defendant was charged with sleeping in public, a violation of a Dallas ordinance. On appeal the defendant argued that the complaint should have been quashed for failure to allege a culpable mental state. The appellate court reviewed the ordinance in question and noted that it failed to mention any mental state. Citing Section 6.02 of the Penal Code and *Honeycutt*, the court held that since the ordinance did not dispense with the culpable mental state, then one must be included as an element of the offense, and since the complaint failed to allege the requisite mental state then it was defective. The State argued that a general ordinance found at the beginning of the city code dispensed with the mental element: “A culpable mental state is not required for the commission of an offense under this Code unless the provision defining the conduct expressly requires a culpable mental state.” Dallas City Code Sec. 1-5.1. Unfortunately, the State never placed this particular ordinance in the record during the trial and the court refused to consider it. 687 S.W.2d at 374. Clearly, the court found the city to have the authority to remove the mental state in its ordinances, but because of a procedural error in creating the record the court was allegedly bound to reverse. See, *Green v. State*, 594 S.W.2d 72, 74 (Tex. Crim. App. 1980).

Conclusion

A careful reading of *Honeycutt* and its progeny reveal that a municipality can dispense with a culpable mental state if it clearly does so in the ordinance. A municipality cannot, however, create a new culpable mental state, and when the ordinance is silent, should presume that one is required. Advocates and others asserting a different “reading” of these cases simply have not read them.

Have You Changed the Magic Words?

The 76th Legislature in SB 1230 changed the magic words that commence all complaints in municipal court. The old beginning was “In the name and by authority of the State of Texas”. The new beginning is “In the name and by the authority of the State of Texas”. This change was effective September 1, 1999.

DPS continued from page 1

ing an alcohol awareness course. The Legislature did not, however, change the language regarding failure to perform community service when permitting the judge to order a driver’s license suspension.

Therefore, some judges, knowing that community service is also required when a juvenile is convicted of an alcohol-related matter, have seized upon the language to issue driver’s license suspensions when a juvenile alcohol offender fails to perform the court ordered community service.

The Department of Public Safety has determined that they will accept and honor these suspensions. Judges across the state have a difference of opinion as to the legality of the suspensions.

Some municipal judges and justices of the peace feel the license suspension for lack of community service language was inadvertently left in the statute.

They feel the Legislature simply failed to remove it when they eliminated the community service in lieu of an alcohol awareness course. In support of their position, they point out the suspension language is contained in Alcoholic Beverage Code Section 106.115 which is titled *Attendance at Alcohol Awareness Course; License Suspension*. They note it is not contained in the same code sections as the provisions requiring judges to order community service.

Those judges who are using the suspensions argue that the written law gives them the authority. They further believe the Texas Legislature meant for the suspensions to be enforced against minors who fail to perform alcohol-related community service. They say, “Otherwise, they [the Legislature] would have removed the community service provision.”

The suspensions are particularly attractive to courts since there is little to no way to enforce community service ordered. To force compliance with community service orders, some judges have resorted to contempt which is often cumbersome and time consuming.

The Department of Public Safety has chosen to not take a position on the controversy. DPS simply says, “There is a reasonable argument for both positions.” They further state, “Regardless of the Department’s position, the interpretation of this statute falls to the courts. If the judge uses this section to suspend the minor’s driver’s license for failing to perform the community service, the Department will do as ordered.”

All judges are encouraged to review the statutes and make their own decision

regarding license suspensions and when they should be ordered. It is also prudent for judges to consult with their city attorney.

Applicable statutes: *Alcoholic Beverage Code Sections 106.071 and 106.115*

Excerpt from *Texas Municipal Court-Justice Court News*, Vol. XIII, No. 7, February 2000. Used with permission. For information on subscription (\$34 a year), contact TMCJCN, P.O. Box 2605, Midland, Texas 79702-2605.

COMMISSION UPDATE

EXAMPLES OF IMPROPER JUDICIAL ACTIVITY DURING FY 99

The Commission issued several public sanctions, private sanctions, and orders for additional education during the 1999 fiscal year. Examples of the sanctions, listed in descending order of severity, are listed below.

Public Censure

- A judge was indicted after he violated an order of a U.S. Bankruptcy Court, which prohibited him from incurring additional debt without the prior consent of the court or the trustee. [Violation of Canon 2A, Article 5 Section 1-a(6)A of the Texas Constitution, and 18 U.S.C. § 401].

Public Reprimand

- A judge hired someone for whom he had a “romantic admiration,” to serve as his court clerk. He admitted to writing love letters to and participating in “friendly” physical touching with this person. The Commission concluded that, in hiring a person in whom he had expressed a romantic interest and his subsequent touching of that person, the judge engaged in conduct that was clearly inconsistent with the proper performance of his duties. Moreover, his actions cast public discredit upon the judiciary and the administration of justice. The judge also refused to accept criminal complaints in his court, a practice that he continued for at least one month. The Commission concluded that the judge failed to hear and decide matters that appropriately had been assigned to his court. [Violation of Canon 3B(1) and Article 5 Section 1-a(6)A of the Texas Constitution].

- A part-time judge was a practicing attorney. Over one month following her disbarment, she signed a waiver of arraignment as the attorney of record for her client, the defendant. Approximately one month later, she filed a motion on her client’s behalf.

The judge also refused to grant a default judgment when a defendant had been served but failed to appear in court, and she did not permit a local attorney to act as local counsel on behalf of a litigant in his court. [Violation of Canons 2A and 3B(8), Section 28.031 of the Texas Government Code, and Article 5 Section 1-a(6)A of the Texas Constitution].

- Following a heated altercation with the individual who was “purporting to act as constable,” a judge used the power of his office

repeatedly to cause that individual to be confined in jail. [Violation of Canons 2A and 2B and Article 5 Section 1-a(6)A of the Texas Constitution].

- A judge continued to foster, further, and participate in the operations of a bail bond company which purportedly was owned and operated by his children, even after he had assumed the bench. [Violation of Canons 2B and 4D(1) and Article 5 Section 1-a(6)A of the Texas Constitution].
- After being cited for criminal trespass by an on-campus university police officer for attempting to sell varsity football tickets on school property, the judge was arrested when he attempted to sell the tickets a second time. He was charged with criminal trespass and released on his own recognizance, and the incident received extensive media coverage. [Violation of Canon 2A and Article 5 Section 1-a(6)A of the Texas Constitution].

Public Warning

- A judge routinely dismissed traffic cases in exchange for defendants paying a specified amount in “donation” to his local law enforcement charity. [Violation of Canons 2A and 2B and Article 5 Section 1-a(6)A of the Texas Constitution].

Public Admonition

- A judge made prejudicial comments to the grand jury concerning several pending criminal mischief cases, which gave the impression that he had assumed a prosecutorial role. [Violation of Canons 2A and 3B(10), and Article 5 Section 1-a(6)A of the Texas Constitution].
- A judge initiated *ex parte* contact with two female divorce/custody

litigants whose cases were pending before his court. Because he socialized with both, he conveyed the impression that these women were in a special position to influence him. The Commission concluded that the judge did not act as a good custodian of the public trust and did not enhance public confidence in the legal system. [Violation of Canons 2B, 3B(8), and 4A and Article 5 Section 1-a(6)A of the Texas Constitution].

- While serving as a visiting judge for a district court, a judge distributed invitations for an upcoming campaign fund-raiser from the bench and through the court coordinator's office. [Violation of Canon 2B].
- Following his decision not to seek re-election, a judge caused a political advertisement to be published in the local newspaper on behalf of another judicial candidate. [Violation of Canon 5(3)].

Private Reprimand

- A judge released a letter, which a fellow judge had written to the media, and made numerous comments in the newspaper regarding the other judge and the letter. The Commission characterized the judge's comments as non-constructive, intemperate and calculated to impugn the basic character and competence of his fellow judge. [Violation of Canon 2A and Article 5, Section 1-a(6) of the Texas Constitution].
- A judge publicly endorsed another candidate for justice of the peace. [Violation of Canon 5(3)].
- A judge entered a guilty plea for a defendant who had not appeared in court based upon *ex parte* communication with the defendant's wife. [Violation of Canons 2A and 6C(2)].

Private Warning

- A judge presided over a case in which the plaintiff was related to his court clerk. Although he previously had recused himself, he granted the plaintiff's motion for a new trial. [Violation of Canons 2A and 2B].
- A judge exceeded his lawful authority on two occasions: (1) when he issued a letter ordering an individual to cease and desist from further activities as constable; and (2) when he signed as surety for the individual following a dispute between the individual and a local justice of the peace, although it should have been foreseeable that the individual might come before his court as a defendant. [Violation of Canon 2B].

Private Admonition

- A judge improperly allowed his name to be used in a radio commercial for his businesses during the holiday season. [Violation of Canon 2B].
- During his candidacy for an appellate judicial office, a judge criticized a decision that the appellate court had made in a case interpreting a city ordinance. The Commission concluded that, in doing so, the judge indicated an opinion on an issue that was subject to judicial interpretation by the office he was seeking. [Violation of Canon 5(1)].
- A judge continued to exercise jurisdiction over his son's case, even though he was legally disqualified from sitting as a judge in the matter. [Violation of Article 5, Section 11 and Article 5, Section 1-a(6) of Texas Constitution, Article 30.01 of the Texas Code of Criminal Procedure, Section 573.023(c) of the Texas Government Code, and Canon 2A of the Code of Judicial Conduct].

Orders for Additional Education

During FY 99, the Commission on Judicial Conduct issued orders for additional education on the following topics:

- Avoiding *ex parte* communication;
- Trial and appellate procedures in forcible entry and detainer actions;
- Pretrial procedures;
- Contempt procedures;
- Fiscal management for justice courts;
- Jurisdictional limitations; and
- Avoiding the appearance of partiality.



The Judicial Ethics Committee of the Judicial Section of the State Bar of Texas issues opinions on ethical issues faced by Texas judges. Although these are not binding on the Judicial Conduct Commission, the reasoning of these opinions is insightful.

A municipal judge may request an ethics opinion by writing the Honorable Suzanne Stovall, Chair of the Judicial Ethics Committee. Judge Stovall's address is: County Court at Law No. 1, County Courthouse, Conroe, Texas 77301-2883.

OPINION 211

J.P. Running Collection Agency

Question: May a justice of the peace make telephone calls and send letters to debtors on behalf of a collection agency? The judge's communications would not mention her judicial status, she would do the work at home and not at the court offices, and any suits to collect the debts would be heard by a different judge.

Answer: No. Such activity would violate Canon 4D(l), which provides that “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 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.”

Canon 2B also contains this general prohibition: “A judge shall not lend the prestige of judicial office to advance the private interests of the judge or other.” Direct debt collection activities by the judge would inevitably cause some litigants and others in the community to question her impartiality in debt collection cases, or to perceive that she is exploiting her office or lending its prestige to the private interests of the collection agency and the creditors it represents.

For similar reasons, previous opinions have forbidden judges to own an interest in a title insurance company (Opinion 23), to serve as directors of banks or related corporate entities (Opinions 37, 38, 42, 61, and 89), or to serve on a downtown development committee (Opinion 141).

OPINION 214

Support For Organization Seeking CJAD Funding

Question: May a judge write a letter of support for a non-profit organization pertaining to the organization’s seeking CJAD funding: if the letter deals only with the judge’s knowledge of the services the organization provides in the community and does not itself solicit funds?

Answer: Yes. Canon 4(C)(2) states that a judge “shall not solicit funds for any educational, religious, charitable, fraternal or civic organization...”. If the letter were restricted to a recitation of

the services the organization provides in the community, based on the judge’s knowledge, and does not solicit funds, there would be no violation even if the net effect of the letter would be to make more likely the organization’s receiving the funds, if the other requirements of Canon 4 were met. In this context, a judge could very well be in a unique position to provide such information.

Question: May a judge serve as a member of an advisory board of an organization which is partly funded by government and partly by private funding?

Answer: Yes. Canon 4(C)(2) states that a judge “may be listed as an officer, director, delegate or trustee of (any educational, religious, charitable, fraternal, or civic organization).”

OPINION 215

Gifts To Judges For Catastrophic Loss

Question 1: May a judge or a judge’s family, who has suffered a catastrophic loss, accept gifts of money from individuals who work in the courthouse or practice in the judge’s court?

Answer: Yes and no. Canon 4D(4)(c) clearly states neither a judge nor his family may accept gifts from anyone whose interests have come or are likely to come before the judge. Therefore, a judge may not accept gifts from lawyers or parties who have come or might come before the court.

The Canon 4D(4)(c) also states that a judge or his family may accept gifts from individuals whose interests have not come and are not likely to come before the court. It would seem, then, that the judge and family could accept gifts from non-lawyer friends and acquaintances who happen to work in the courthouse but have no interest that has or might come before the court.

Question 2: May a judge accept gifts he would otherwise be prohibited from receiving if they are placed in a blind trust.

Answer: No. The prohibition against accepting gifts is clear: A judge may not accept gifts from ANY persons whose interests have to may come before the court, whatever the form!

OPINION 216

Lawyer Hospitality

Question: Would it be proper for a judge who is hearing a case out of county to stay in the lake house of a lawyer who often appears in his court? The lawyer has no connection with the out of county case. Would it make any difference if the county paid the attorney the same rate that would be paid if the judge stayed in a motel?

Answer: No, a judge may accept gifts or hospitality only under very limited circumstances as described in Opinion No. 215. This use of the lake home is specifically disallowed in Canon 4D(4)(c), *i.e.*, a judge may not accept the gift from a person whose interests have come or are likely to come before the judge.

If the county pays for the judge’s stay, the judge could avoid ethical violation, but only if the payment is commensurate with the market value of the accommodations and the rental is done regularly and not just for the judge.

OPINION 217

Judicial Code Applies To Judges Under Suspension

Question 1: May a judge who is currently under suspension by the Commission on Judicial Conduct and receiving judicial pay receive compensation for services as a mediator?

Answer: It is the belief of the committee that since the judge is receiving

judicial pay although suspended by the Judicial Commission, he is required to comply with the Code of Judicial Conduct. It is clear from Advisory Opinion 161 that a judge is prohibited from serving as a mediator.

Question 2: If a judge cannot be paid, may he ask the parties to make a donation to the Children's Assessment Center?

Answer: This portion of the question is moot as a judge may not mediate. In the interest of clarity, the committee would offer the opinion that the request of a donation to a charity is fund-raising and clearly prohibited by Canon 4C(2).

OPINION 219

Charitable Gift In Lieu Of Expense Of Fund-Raising Party

Question: A judge proposes to invite supporters to a "non-event" fundraiser. Instead of paying for a fund-raising event, the judge announces that he will contribute existing campaign funds to a charity serving inner city youth. The invitation explains that no funds raised by the solicitation letter would go to the charity. Does the proposal violate the Code of Judicial Conduct?

Answer: No, this approach to fund-raising does not contravene Canon 4C(2)'s prohibition against fund-raising for charitable organizations. The judge is clearly not going to use any of the funds being solicited for that charity. The Committee is of the opinion that the charity should not be named.

OPINION 220

Judge As Charity Waiter

Question: Is it an ethical violation for a judge to participate as a "celebrity server" for a fund-raising dinner for Court Appointed Child Advocates

(CASA). CASA is a nonprofit organization. The judges' names will be used in the publicity for this event. The judges will not participate in any actual fund-raising. The judges only job will be to serve dessert to the amusement of the guests.

Answer: No, the proposed activity is not a violation of the fund-raising prohibition found in Canon 4C(2). The judge's participation is analogous to being a guest speaker at a fundraiser that is specifically allowed in Canon 4C (2).

OPINION 239

May A Judge Lease to Attorneys?

Question: At the time a judicial candidate was elected to office, she owned an office building with her sister. The sister is an attorney and the office building space is leased to attorneys. May the judge-elect, once she takes office, continue her ownership in the building? If not, may she be a guarantor on a note securing a mortgage held by the judge's sister on the building that will continue to be leased to attorneys?

Answer: The applicable Code provisions are Canon 4D(1) and (2). Canon 4D(1) states:

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.

Canon 4D(2) states: "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."

Consistent with these provisions, the judge would not violate the Code of Judicial Conduct if she recused herself from cases in her court in which the attorneys who lease space in her building appear. Similarly, if the judge chose to guarantee the note held by her sister, the judge should still recuse herself from cases in her court in which the attorneys who lease space in her building appear.

A problem could arise, however, in a smaller county in which the judge may be the only judge in the county. In that situation, recusal may be impractical and the judge would be required to either divest herself of the property interest or lease the property only to persons who are not likely to come before the court.

OPINION 243

Justice of the Peace as Sales Tax Coordinator

Question: May a justice of the peace act as a sales tax coordinator? The duties would include:

- 1) developing, coordinating and preparing sales tax forms;
- 2) assisting the city in meeting with any business to evaluate sales tax issues and negotiate with the local businesses the terms and conditions of sale tax sourcing;
- 3) issue sales tax reports on a monthly basis;
- 4) coordinate with businesses the filing of necessary documents with the State; and
- 5) make recommendations to the city council about sales tax collections matters. The justice of the peace would not be acting in any capacity as a tax collector.

Answer: No. Such activity would violate Canon 3B which provides that, "A judge should not lend the prestige

of judicial office to advance the private interest of the judge or others.” Meeting with business people as sales tax coordinator would inevitably cause some business people, who are also litigants in the judge’s court, to question the impartiality of the judge in cases involving that business person or to perceive that the judge is lending the prestige of the judge’s office to the private interest of the city. Further, Canon 4D(1) says that, “A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge’s impartiality . . . or involve the judge in frequent transaction with lawyers or persons likely to come before the court on which the judge serves.” Since both the city and the business taxpayers are persons likely to come before the court on which the judge serves, it is best that the justice of the peace not also serve as the city’s sales tax coordinator.

OPINION 244

Judges to Give Award to Practicing Lawyer

Question: May a group of judges give an award to honor a deceased member of the judiciary? The recipient would be an outstanding lawyer that practices before them and would be named on a plaque on permanent display.

Answer: No. This would indicate that this lawyer held some special position with the local judiciary. Canon 2 requires that a judge should act at all times in a manner that promotes public confidence in the impartiality of the judiciary.

OPINION 245

Judge On Board of Non-Profit Corporation

Question: May a judge serve as director of a private, non-profit corporation supported by public and

private funds. The purpose of the corporation is to provide necessities for CPS children. The judge would do no fund-raising. The judge’s name would appear on the letterhead as a director on a fund-raising letter. Some of the children benefiting from the program could appear in the judge’s court.

Answer: Yes. Canon 4C(2) specifically allows the judge’s name to appear on the letterhead of the organization’s fund-raising letter. The committee sees no conflict with children who benefit from the organization appearing in the judge’s court.

OPINION 246

Judge Serving as Visiting Judge While Serving on Texas Board of Criminal Justice

Question: May a retired judge who is eligible for judicial service be appointed to hear civil and family cases while serving on the Texas Board of Criminal Justice?

Answer: No. The Code of Judicial Conduct (the Code) prohibits such activity. Service on the Board by a sitting or retired judge would violate Canon 4A and 4H of the Code.

Canon 4A of the Code provides:

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.

Canon 4H of the Code provides in part:

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.

Canon 6F of the Code provides:

A senior judge, or a former district judge or a retired or former statutory or 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.

The Texas Board of Criminal Justice governs the Texas Department of Criminal Justice, Tex. Gov’t Code 492.001 (1998). The duties of the board include employment of the executive director of the department, supervising the executive director, and approving the operating budget of the department. Tex. Gov’t Code 492.013 (b), (c) (1998)

OPINION 247

Responsibility of Judge to Notify Immigration Department of Undocumented Alien

Facts: A judge learns from the evidence during trial that a witness or party is an undocumented alien.

Question: Does the code require the judge to report the individual to the Immigration and Naturalization Service? Does the code prevent the judge from making such a report?

Answer: No to both questions. Some statutes may require judges to report law violations to the proper authorities. This committee does not inter-

pret statutes; it only issues opinions interpreting the Code of Judicial Conduct. Canon 3D specifies what judges must do when they learn that another *judge* has violated the code, or that a *lawyer* has violated the rules of professional conduct. But the code neither requires judges to report criminal violations by witnesses or parties nor prevents them from reporting violations. The committee therefore concludes that the judge's obligations are not governed by the code.

OPINION 248

May Courts Use a Law Firm's Web Site to Post Court Information?

Facts: A law firm offers to let the local courts post their dockets, regularly updated by court personnel, on the firm's web site. In accessing the web site, users would be exposed briefly to the firm's advertisement.

Question: Would this arrangement violate the code?

Answer: Yes. Court use of a law firm's web site would violate Canon 2B, which says: "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."

OPINION 249

May a Judge Serve as Chairperson of Fund-raising Event for Non-profit Group?

Question: May a judge serve as the Chairperson of the annual fund-raiser for a non-profit charity organization?

Answer: No, the Code does not permit a judge to act as chairperson of a charities fund-raising event. Canon 4C(2) prohibits fund-raising by a judge but does allow a judge to be a speaker

or guest of honor. In analyzing this activity it appears to the committee that a judge cannot act as chair because this position entails real duties (as compared with an honorary chair with no real duties) and is so inextricably intertwined with the fund-raising as to constitute prohibited behavior.

OPINION 250

May a Judge or Judicial Candidate Answer Questions Regarding Party's Platform?

Question: May a judge or judicial candidate answer questions pro-pounded by a political party regarding the judge/candidate's position regarding specific planks of the parties' platform?

Answer: No. Judges are prohibited under the Code of Judicial Conduct from answering such questionnaires. Canon 5(1) states "a judge or judicial candidate shall not make statements that indicate an opinion on any issue that may be subject to judicial interpretation by the office which is being sought or held... ." Additionally Canon 5(2)(1) states a judge or judicial candidate shall not: "make pledges or promises of conduct in office regarding judicial duties other than the faithful and impartial performance of the duties of the office...".

In the event a judge answered such questions, in addition to violating the Code of Judicial Conduct, the judge might be subject to being recused from any case dealing with the subject matter of the question.

OPINION 251

Judge on Honorary Committee for Charity

Question: May a judge serve on the Honorary Committee for an annual Sickie Cell Association Fund-Raiser?

Answer: Yes, so long as the judge does no actual fund-raising. The answer is governed by Canon 4C(2) which states that a judge shall not solicit funds for charitable organizations but the judge's name may be listed as an officer, director, delegate or trustee of such an organization. It appears to this Committee that such activity is allowed so long as the judge does no actual fund-raising. The committee believes that being listed as an Honorary Committee member is analogous to being listed as a speaker or guest of honor. See Opinions 237, 249.

OPINION 252

May Judges Serve as the Host Committee for Fund-raiser for the Guardian Ad Litem Task Force, Inc.?

Question: May a judge serve on the Host Committee of a Fund-Raiser for the benefit of the Guardian Ad Litem Task Force, Inc., a non-profit corporation that provides training and organization for volunteer ad litem in the family courts? The judges would do no direct fund-raising.

Answer: Yes, a judge may serve on the Host Committee. This activity is governed by Canon 4. Canon 4B(2) allows a judge to serve as a member, officer, or director of an organization 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, but should not personally participate in public fund-raising activities. Additionally Canon 4C(2) allows a judge to be a speaker or guest of honor at a charitable fund-raiser. In light of both these sections of Canon 4, it is the opinion of the committee that such activity is permissible.

OPINION 253

May a Judge Appear on Television in a Public Service Announcement for a Non-profit Organization Asking for Volunteers?

Question: May a judge appear on television in a public service announcement for the Texas non-profit office of "Recording for the Blind and Dyslexic" asking people to volunteer their time as readers?

Answer: Yes. The judge may make such announcement so long as the prestige of judicial office is not used. Canon 4 of the Code allows a judge to participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. It is the belief of the Committee that although the judge may be identified as a judge it would be improper if he appeared in the announcement wearing his robe. The committee believes wearing the judicial robe other than while performing official duties or during official ceremonies inappropriately lends the prestige of office to the activity in which the robe is worn.

OPINION 254

Judges May Support Creation of the Judicial Compensation Commission

Question: May judges publicly support new legislation creating a Judicial Compensation Commission? The Commission would set the salaries of Texas judges.

Answer: Yes, judges may publicly support such legislation. Canon 4 allows judges to speak, write, lecture, teach, and participate in extra-judicial activities concerning the law, the legal system and the administration of justice. For a judge to support such legislation comes within the activity allowed by this section of the Code.

Questions for the Judicial Conduct Commission?

Call the Commission toll-free:

877-228-5750

RESOURCES FOR YOUR COURT

AMERICAN JUDICATURE SOCIETY

The American Judicature Society (AJS) is a nonpartisan organization with a national membership of judges, lawyers and non-legally trained citizens interested in the effective administration of justice at the federal and state levels. AJS membership is open to anyone who supports the improvement of the nation's courts. AJS publishes a journal, called *Judicature*, has a set of publications and videos on issues related to judicial independence, ethics, judicial selection, jury service, court administration, and public understanding of the justice system. The organization also conducts and disseminates empirical research, produces educational programs, and maintains an information service. Membership in AJS includes a subscription to *Judicature*. Regular memberships are \$75 and for judges the fee is only \$60. For information and membership applications, contact: AJS, 25 E. Washington, Suite 1600,

Chicago, IL 60602 (312/558-6900). Its web site may be found at www.ajs.org.

Listed below are brief descriptions of current AJS materials that are of interest to municipal courts and that are recommended for your review. A more extensive list of publications is found on their web site [www.ajs.org] or by contacting the Chicago office. An order form is found on Page 15 in this newsletter.

CONDUCT AND ETHICS IN THE COURTS

The Digest of Judicial Ethics Advisory Opinions

edited by Debora L. Solomon
This reference work compiles and annotates all advisory opinions on judicial conduct issued by state ethics committees since 1972. It contains extensive subject and canon indices and describes the various entities that issue judicial advisory opinions. 1991. Order #505. \$35.

An Ethics Guide for Part-Time Lawyer Judges

by Cynthia Gray
This self-study guide covers key issues in judicial ethics for part-time judges who also practice law. It examines the rules of the code of judicial conduct, discusses judicial ethics advisory opinions interpreting the rules, and includes a self-test and discussion questions designed to guide readers in determining how the rules affect their practice. Order #939. \$25.

From Advocate to Arbiter: Pre-Bench Training for State Court Judges, A Videotaped Program for the New Judge

This videotape program is designed to teach judges not how to interpret the law, but rather how to fulfill judicial responsibilities. It covers such topics as

becoming a public figure, courtroom control, and handling stress. The program consists of a self-study guide and three tapes. 1992. Order #556. \$45.

From Advocate to Arbiter: Pre-Bench Training for State Court Judges, Instructor's Manual and Videotape

This manual and videotape are designed for use by judicial educators to present their own pre-bench program. The 30-minute video features 15 short scenarios and a criminal bench trial. The manual contains the scripts of the scenarios, questions to facilitate discussion, and three sample program agendas. 1992. Order #548. \$25.

Handbook for Judges: An Anthology of Inspirational and Educational Readings

edited by George H. Williams and Kathleen M. Sampson
Hardbound. This third edition of a popular AJS publication has chapters on the essential personal and professional qualities of a judge; the work of judging; communicating with juries; sentencing criminals; writing opinions; managing cases; the relationship between courts and communities; the judicial role; and the judicial reform movement. 1984. Order #8580. \$14.95 (hardcover).

Judicial Conduct Reporter

A quarterly newsletter prepared by the Society's Center for Judicial Conduct Organizations. This newsletter analyzes developments in judicial discipline and disability, reports current decisions, reviews books and journal articles, and presents an annual survey of commission complaint disposition, budget, and staff. \$28 per year. Single copy \$8 (Foreign \$32 per year; single copy \$9).

Judicial Ethics and the Administration of Justice: A Videotaped Instructional Program on Judicial Ethics

This two-tape program covers such topics as courtroom demeanor, preju-

dice and bias, dealing with the pro se litigant, conflict of interest and disqualification, off-the-bench conduct (speaking and writing, social activities, civic and charitable activities, and commenting on pending cases), and supervising court personnel. On the tapes, professional actors portray judges, and a panel of experts discusses the questions of ethical and professional conduct raised in the scenarios. 1990. Order #467. \$30.

Justice at First Hand: A Videotape Curriculum on Ethics & Professionalism for Nonjudicial Court Personnel

This program features four scenarios in which professional actors portray dilemmas encountered by court employees. Topics include confidentiality, political activity, favoritism, discrimination, sexual harassment, and other areas. Each scenario is followed by a panel discussion among court nonjudicial personnel and law professors. The program consists of a one-hour tape, instructor's manual, and self-study guide. 1995. Order #653-661. \$25.

Key Issues in Judicial Ethics

(a series of six background papers) by Cynthia Gray

Judges frequently seek advice from state judicial ethics advisory committees about issues such as providing recommendations, political activity by members of their families, and attending social, civic and charitable functions. These papers examine advisory opinions on these topics and others, point out any inconsistencies among the states on advice given, and discuss relevant case law. Ten to fourteen pages each. 1996. The six papers are:

Recommendations by Judges, Order #841; *Political Activity by Members of a Judge's Family*, Order #842; *Organizations that Practice Invidious Discrimination*, Order #843; *Ethical Issues for New Judges*, Order #845; *A Judge's Attendance at Social Events, Bar Association Functions, Civic and Charitable Func-*

tions, and Political Gatherings, Order #844; *Real Estate Investments by Judges*, Order #846. Individual papers are \$7 each. All six papers: Order #840. \$35 (counts as one publication for postage and handling purposes).

Model Code of Conduct for Nonjudicial Court Employees

The code covers such areas as abuse of position, confidentiality, conflict of interest, political activity, and performance of duties. 1989. \$7.50.

Practices and Procedures of State Judicial Conduct Organizations

by Judith Rosenbaum
This publication describes the process by which complaints about judges are resolved, describes the procedures and practices used by most of the state judicial conduct organizations, and analyzes the advantages and disadvantages of some procedures. 1990. Order #491. \$35.

When Judges Speak Up: Ethics, the Public, and the Media

by Cynthia Gray
This multimedia curriculum is designed to help judges resolve the conflict between increasing demands for their observations on controversial legal issues and their commitment to maintaining public confidence in the judiciary. The curriculum consists of a videotape and an instructor's manual or self-study guide. The video and self-study guide are also available on CD-ROM. Videotape and instructor's manual. Order #823. \$25/set. Videotape and self-study guide. Order #831. \$25/set. CD-ROM self-study package. 1998. Order #831C. \$20/ea.

THE PUBLIC AND THE COURTS

Behind Closed Doors: A Resource Manual to Improve Jury Deliberations

The manual documents the research process that led to the creation of the accompanying jury deliberation guide, analyzes past deliberation improvement efforts, and provides strategies

for implementing the guide in different court systems. The guidebook provides information jurors need to improve their satisfaction with and confidence in their decision-making process. Order #955. \$25.

Cornerstone of Democracy: The U.S. Jury System

This 18-minute videotape provides a broad overview of the jury's role in the American justice system. It blends information about jury service with the dramatized stories of citizens directly touched by the constitutional right to trial by jury. The videotape can be shown during courthouse juror orientations, public-outreach programs, and civics courses at the junior high or high school level. Each copy includes a Guide for Presenters and Viewers. 1996. Order #769. \$25.

Faces of Justice: An Introduction to the Courts

This orientation program is designed to familiarize new court employees and new nonlawyer judges with the courts their historical foundation, the values underlying them, and their basic purposes and operations. The program packages come in three versions. Package A includes a 30-minute videotape, a trainer's manual for group settings, and a study guide for individual use by court employees. Package B includes the tape, trainer's manual, and a study guide for nonlawyer judges. Package C includes the tape, the trainer's manual, and both study guides. 1995. Order #688-696 (Package A) \$15; 688-67X (Package B) \$15; 688-696-67X (Package C) \$18.

Improving Citizen Response to Jury Summonses: A Report with Recommendations

by Robert G. Boatright

This report, based on a nationwide survey, addresses the effectiveness of policies designed to increase juror yield and the attitudes and characteristics of those citizens who do not respond to jury summonses. It identi-

fies reasons for nonresponse and recommends steps that courts can take to increase response rates. 1998. Order #882. \$25.

Meeting the Challenge of Pro Se Litigation: A Report and Guidebook for Judges and Court Managers

by Jona Goldschmidt

This book summarizes the legal and ethical issues involving self-represented litigants that daily confront judges and court staff, offers a detailed look at programs in 11 states designed to help self-represented litigant, and presents 14 policy recommendations for courts, judges, lawyers, and legislatures. 1998. Order #815. \$25.

Serving the Public: A Curriculum for Court Employees

by Kathleen M. Sampson, Seth S. Andersen and Diane C. Decker

This training manual provides practical knowledge court employees must have to maintain excellence in customer service. It helps them identify who their customers are, both internal and external, and analyze their needs and expectations. 1997. Order #807. \$25.

Silent Justice: Court Experiences of People Who Are Deaf or Hard of Hearing

Silent Justice contains the real-life stories of people with hearing impairments who have been denied full access to the courts and equal justice. Hosted by nationally known comedienne Kathy Buckley, who is hard of hearing, it describes what courts can do to ensure that people who are deaf or hard of hearing can participate fully in the court process. The 22-minute closed captioned video is accompanied by a discussion guide. 1997. Order #793. \$25.

User-Friendly Justice: Making Courts More Accessible, Easier to Understand, and Simpler to Use

by Jona Goldschmidt and Ira Pilchen
This book contains more than 100

suggestions for improving courthouse services at minimal cost and with limited effort. The tips, many of which courts nationwide have implemented, were submitted to AJS by judges, lawyers, court staff, and court users. 1996. Order #750. \$12.

When Judges Speak Up: Ethics, the Public, and the Media
(See Conduct and Ethics)

OTHER

Judicature, the Journal of the American Judicature Society

Edited by David Richert

This bimonthly peer-reviewed journal consists of scholarly articles, notes, and book reviews examining all aspects of the administration of justice and its improvement. \$48 per year (foreign \$60 per year), institutions only. Individuals receive with AJS membership. Single copy \$9 (foreign \$11).

NOMINATION SOUGHT FROM JUDGES

The Texas Criminal Defense Lawyers Association (TCDLA) is requesting nominations of lawyers to attend the *Criminal Trial Advocacy Institute* in Huntsville, Texas on March 26-31, 2000.

Now in its 24th year, the *Institute* is an intensive program of practice exercises, enhanced by faculty demonstrations and personal supervision. Enrollment is limited to 50 students, who are selected to participate by an application and

Nominations continued on page 15

Order Form
AMERICAN JUDICATURE SOCIETY
Publications and Videotapes

Nominations continued from page 14

registration process. Scholarships are available.

A week before the *Institute*, students receive course materials simulating a case file, including police reports and witness statements. Preparation is essential because through the week students must try their own case, from jury selection to final argument. As judges, you are in a unique position to recommend attorneys who are either new to the courtroom or new to criminal law who you think would benefit from this valuable seminar. Attendees must be willing to accept court appointments. TCDLA and the Criminal Defense Lawyers Project invite you to recommend your colleagues for this valuable seminar.

For more information and or a brochure, please call Randy McClammy at 512/478-2514, visit our website or contact the TCDLA, 600 West 13th Street, Austin, TX 78701.

www.tcdla.com



**FY 01 GRANT
ACTIVITIES**

The TMCEC Board of Directors met in Austin to begin planning for program expansion made possible throughout the increased grant funds available from the Judicial Training and Personnel Fund. The Board gave preliminary approval to the following

Title	Order #	Cost
_____	_____	_____
_____	_____	_____
_____	_____	_____

Total Cost _____

Less 15% discount (current or newly enrolling AJS members only) _____

Postage/handling \$5=(1) publication; \$7.50=(2) or more publications _____

Please enroll me for a one-year membership in AJS _____

Regular \$75 Judge or full-time professor \$60 Student \$20 Retiree \$30

Total enclosed (make check payable to AJS) _____

Please charge my Visa Mastercard Card # _____

Exp. Date _____ Cardholder's signature _____

Name _____

Address _____

City, State, Zip _____

Telephone _____

Send or fax to American Judicature Society, 180 N. Michigan Ave., Suite 600, Chicago, Illinois 60601 • Telephone (312) 558-6900 ext 147 • Fax (312) 558-9175

Quantity discounts: 10 or more, 10%; 20 or more, 15%; 30 or more, 20%. On quantities of 10 or more, actual shipping costs will be added.

projects that will be included in the grant application to the Court of Criminal Appeals which is to be submitted on June 1, 2000.

- Two Legislative Updates in 2001
- Specialty Conference for Judges
- Seminars for Bailiffs and Warrant Officers
- Level III Assessment Clinic (housing and meals paid for clerks attending)
- Faculty Scholarships
- Mentor and Technical Assistance Programs for Courts
- Expansion of TMCEC Web Site
- Revision of Judges' Manual
- One set of Clerk Certification Guides sent to all courts at no charge
- New Videotape Programs

The new programs will be offered in the next academic year (September 1, 2000 - August 31, 2001). Judges or court support personnel who have additional projects to suggest can call or write to any of the persons listed below:

Judge Edwin L. Presley
 President of the TMCEC Board
 Municipal Court Judge
 Cities of Benbrook & Westworth Village
 1218 East Cozby
 Fort Worth, TX 76126
 c: 817/249-0181
 FAX (home): 817/249-0181
 E-MAIL: resips@aol.com
 FAX (court): 817/249-0884

Judge Glenn Phillips
 President-Elect of the TMCEC Board
 Chairperson of the Education Committee
 Municipal Court Judge
 City of Kilgore
 1003 Stone Road
 Kilgore, TX 75662
 c: 903/983-1559
 o: 903/984-3300
 FAX: 903/983-1200

Hope Lochridge, Executive Director
 TMCEC
 1601 Rio Grande, Suite 550
 Austin, TX 78701
 512/320-8274
 800/252-3718 (Texas only)
 FAX: 512/435-6118

TMCEC BENCH BOOK & FORMS BOOK

All municipal courts will receive a set of complimentary copies of the TMCEC *Bench Book* and *Forms Book*. These books are sent out at no charge to each court using funds from a grant from the Court of Criminal Appeals. Copies will be mailed, one per court, directly from the Omni Publishers in March. If your court did not receive a copy, please contact Omni directly: P. O. Box 408, Bulverde, Texas 78163 (830/438-7110). Courts wishing to receive a copy of the *Forms Book* on diskette or CD-ROM, should call or write the Center (800/252-3718). One diskette or CD-ROM per court is available at no charge upon request. The revised *Bench Book* will be available on-line later in the Spring. Additional copies of each publication may be purchased from TMCEC for \$20 and \$15 (plus shipping), using the form showed below.

ORDER FORM

NAME: _____
 TITLE: _____
 COURT: _____
 ADDRESS: _____
 CITY, STATE, ZIP _____
 TEL: _____

Municipal Court Personnel
 (municipal court judges, municipal clerks, and municipal prosecutors)

Qty	Title	Cost
_____	TMCEC Forms Book (\$15)	_____
_____	The Bench Book (\$20)	_____

Non-Municipal Court Personnel

Qty	Title	Cost
_____	TMCEC Forms Book (\$30)	_____
_____	The Bench Book (\$50)	_____

Sub-total: _____

Add Sales tax (8.25%): _____
 (or attach sales tax exemption form)



TOTAL: _____

HOTEL RESERVATIONS

Did you notice that in the TMCEC Academic Schedule that TMCEC has resumed making hotel reservations for its participants in the judicial education programs? This is due to popular demand by our constituents who last year requested a return to the former procedure whereby TMCEC staff members

make and guarantee the reservations. On the TMCEC registration form, there is place to indicate your housing needs if you are attending a seminar. All rooms are guaranteed for late arrival by the grant. If you are unable to attend the seminar, contact the Center in Austin (800/252-3718) or call the TMCEC Registration Desk at the hotel the day of the seminars. Participants who do not cancel the reservation will be charged a "no-show" fee by the hotel or Center.

VIENNA CONVENTION

The Attorney General's Office has prepared a publication, *Magistrate's Guide to the Vienna Convention on Consular Notification*, to inform courts of the rights of foreign nations upon arrest. The Vienna Convention on Consular Relations requires courts to notify foreign nations of their right to contact a consular official of their country of nationality. Consular officials have the right to visit with a national of their country and can arrange representation. This law applies to Mexican and Canadian nationals, as well as citizens of 158 other countries. It is important for magistrates to follow the international provisions, as foreign nationals have challenged convictions based on the fact that they were not informed of their Vienna Convention rights.

One copy of the publications was sent to every municipal court in late 1999. If you did not receive a copy or would like an additional copy, contact David Garza, Assistant Attorney General, P.O. Box 12548, Austin, Texas 78711-2548 (512/463-2170). The full text of this publication is also available at : www.oag.state.tx.us.

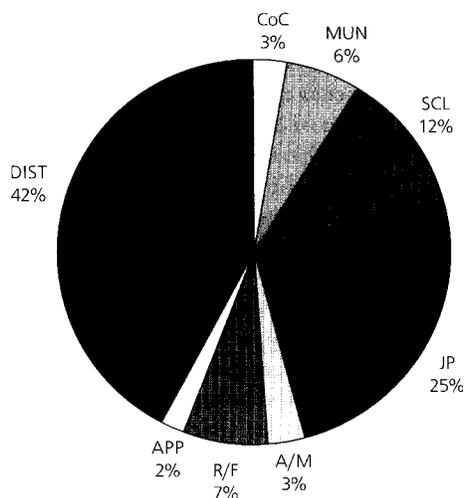
1999 ETHICS REPORT AVAILABLE

The *Annual Report: Fiscal Year 1999 of the State Commission on Judicial Conduct* is now available from the Commission. A copy will be included in the TMCEC course materials in all remaining FY 00 seminars. If a judge or clerk would like a copy prior to attending a TMCEC program, please call the Center at 800/252-3718. The examples of Improper Conduct found on Page 6 of this newsletter is an excerpt from this report.

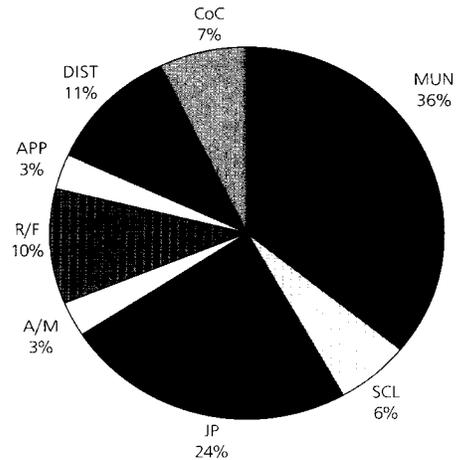
Shown below is an analysis of the 776 complaints filed with the Commission in FY99. If one compares the percentage of complaints filed against municipal court judges (Chart 1) to the number of municipal judges in Texas (Chart 2), it is clear that municipal judges have the lowest ratio of complaints to number of municipal judges. Congratulations!

Percentage of Complaints Filed by Category of Judge

An Analysis of 776 Complaints Filed in FY99



Court Structures of Texas
Analysis of 3,447 Texas Judges by category of court. * Source, FY98 Annual Report from Texas Judicial Council/Office of Court Administration



TMCEC PROSECUTORS PROGRAMS

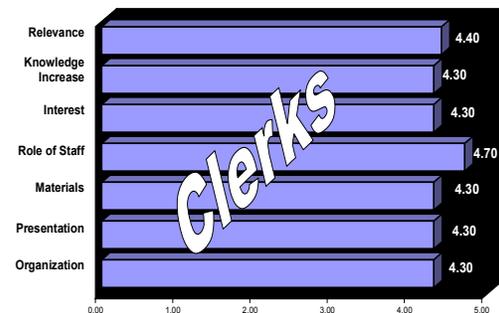
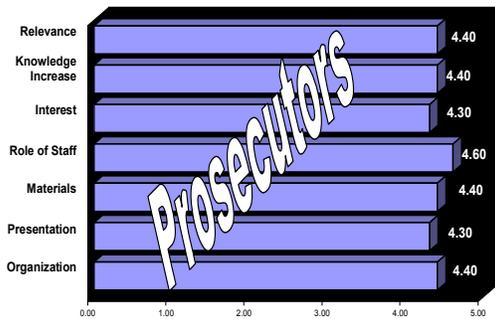
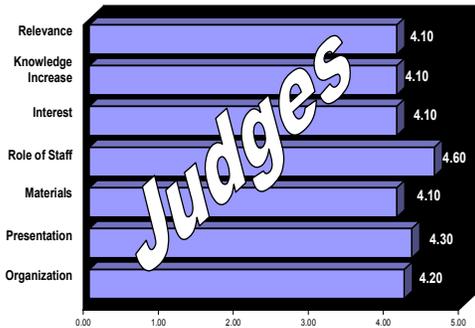
TMCEC will offer two 12-hour prosecutor programs in 1999-2000. It is hoped that more courts will be able to send their staff if the program is offered in two regional sites. The registration fee is \$250 if housing is requested (single room). For prosecutors not needing housing, the registration fee is \$100. The fee covers course materials, two breakfasts, one lunch and all MCLE fees. A promotional brochure will be sent to every municipal court in the state. The registration form on Page 21 of this newsletter may also be used for registration.

March 7-8, 2000
Austin Red Lion Hotel
6121 North IH 35
Austin, TX 78752
512/323-5466
Register by February 21, 2000

June 26-27, 2000
Nassau Bay Hilton & Marina
3000 NASA Road One
Houston, TX 77058
281/333-9300
Register by May 4, 2000

Rating System

- 1 Poor
- 2 Fair
- 3 Adequate
- 4 Good
- 5 Excellent



LOOKING BACK ON LAST YEAR

A review of the overall evaluations for last year, indicates that the 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 and course directors who participated in its FY 99 program last year.

- Mr. Floyd Akers, City Attorney, New Braunfels
- Mr. Richard Alpert, Assistant District Attorney, Tarrant County
- Ms. D'An Anders, Advocacy Consultant, Austin
- The Honorable Regina Arditti, Municipal Court Judge, City of El Paso
- Ms. Shirley Armstrong, Court Administrator, City of Grand Prairie
- Mr. Mike Bass, Court Manager, Arlington Municipal Court
- Mr. James Bethke, Special Counsel to Trial Courts, Office of Court Administration, Austin
- Ms. Karmen Binka, Asst. City Attorney, Municipal Courts, City of San Antonio
- The Honorable James D. Blume, Municipal Court Judge, City of Wylie
- Ms. Shona Bohon, Court Administrator, City of Midland
- Ms. Lynn Bollish, Assistant City Attorney, City of Carrollton
- The Honorable John T. Boyd, Court of Appeals, Amarillo
- Mr. Charles Bubany, George Herman Mahon Professor, Texas Tech University School of Law, Lubbock
- Ms. Rosie Caballero, Court Administrator, City of Coppell
- Mr. Eddie Calderon, Assistant City Attorney, City of Houston
- Ms. Debbie Carter, Advocacy Specialist, Texas Council on Family Violence, Austin
- Attorney General John Cornyn, Attorney General's Office, Austin
- Ms. Denise Davis, Director, Texas Judicial Council, Office of Court Administration, Austin
- Professor Robert O. Dawson, U.T. School of Law, Austin
- The Honorable Robert De Saglio, Municipal Court Judge, City of Fairview

- Ms. Melene Dodson, Attorney at Law, Austin
- Ms. D'Ann Drennan, Prosecutor, City of Southlake
- The Honorable Frieda Fiske, Municipal Court Judge, City of Dallas
- The Honorable Kerry Fitzgerald, Municipal Court Judge, City of Dallas
- Mr. Robert Flowers, Commission on Judicial Conduct, Austin
- Ms. Kathleen Forrest, Systems Analyst, Local Government Assistance Division, Austin
- The Honorable Linda Frank, Municipal Court Judge, Plano & Chief Municipal Court Prosecutor, Arlington
- The Honorable Barbara Gailey, Municipal Court Judge, City of Oak Point
- Ms. Dawn Gaston, Court Clerk, City of Lakeway
- The Honorable Allen Gilbert, Municipal Court Judge, City of San Angelo
- Ms. Sheri Gipson, Evaluator III, Driver Records Bureau, Austin
- Ms. Bonnie Goldstein, City Prosecutor, City of Cockrell Hill
- Mr. Stephen E. Gordon, Lollar and Associates, Fort Worth
- The Honorable F.A. Gossett III, Fremont, Nebraska
- Ms. Linda Gossett, Municipal Court Clerk, City of San Angelo
- Ms. Vickie Grayson, Court Administrator, City of Garland
- Mr. Nigel Gusdorf, Attorney, Austin
- Ms. Leisa Hardin, Court Administrator, City of Crowley
- Mr. Rene Henry, Collections Project Manager, Research & Court Services Section, Austin
- The Honorable Vonciel Jones Hill, Municipal Court Judge, City of Dallas
- Mr. Sonny Hood, Assistant City Attorney, City of Austin
- Mr. Don Jones, Director, Texas Lawyers Assistance Program, State Bar of Texas
- Mr. Scott Joslove, Chief of Municipal Affairs, Attorney General's Office, Austin
- Ms. Mary Ellen Keith, Staff Attorney, Commission on Judicial Conduct, Austin
- Ms. Winnie Kocot, Court Administrator, City of Arlington
- Ms. Stella Ortiz Kyle, Attorney at Law, San Antonio
- Mr. Wayne Lambert, Court Services Coordinator, Irving Municipal Court
- The Honorable C. Victor Lander, Municipal Court Judge, City of Dallas
- Mr. Arturo Laurel, Attorney at Law, Fort Worth
- Mr. James Lehman, Collections Specialist, Office of Court Administration, Austin
- Ms. Pamela Liston, Assistant City Attorney, City of Rowlett
- Ms. Hope Lochridge, Executive Director, TMCEC, Austin
- Mr. James Ludlum, Jr., Attorney at Law, Austin
- Mr. Charles R. Maddox, Senior Expunction Attorney, Criminal Records Service, Department of Public Safety Expunction Unit, Austin
- The Honorable Kevin Madison, Municipal Court Judge, Cities of Cedar Park and Lakeway, and Villages of Bee Caves and Briarcliff

The Honorable Ninfa Mares, Presiding Judge,
City of Fort Worth

Ms. Janet Marton, Assistant County Attorney,
General Counsel Division, Harris County

Ms. John Mason, Staff Attorney, Commission on
Judicial Conduct, Austin

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

Ms. Doreen McGookey, Former Chief Prosecu-
tor, City of Dallas

The Honorable Evelyn McKee, Municipal Court
Judge, City of Austin

Ms. Jade Meeker, Former General Counsel,
Texas Municipal Courts Education Center

The Honorable Berta Mejia, Presiding Judge,
City of Houston

The Honorable Billy K. "Pete" Menefee,
Municipal Court Judge, City of Jacksonville

The Honorable Ron Meyerson, Municipal Court
Judge, City of Austin

The Honorable Lali Minjarez, Municipal Court
Judge, City of Fort Stockton

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

Ms. Leoni Mulvihill, Former Assistant City
Attorney, City of Austin

Ms. Kim Ogg, Mayor's Anti-Gang Director, City
of Houston

The Honorable Michael L. O'Neal, Administrative
Municipal Judge, City of Dallas

The Honorable Patricia Ott, Justice of the
Peace, Precinct 1, Williamson County

Ms. Dottie Palumbo, Assistant General Counsel,
Texas Municipal League

The Honorable Glenn Phillips, Municipal Court
Judge, City of Kilgore

Ms. Kimberly Piechowiak, Asst. City Attorney,
Municipal Courts, City of San Antonio

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

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

The Honorable Edwin L. Presley, Municipal
Court Judge, Cities of Benbrook & Westworth
Village

Mr. Geary Reamey, Professor of Law, St.
Mary's University School of Law, San Antonio

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

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

The Honorable Robert C. Richter, Jr., Municipal
Court Judge, City of Missouri City

The Honorable James Riddell, Municipal Court
Judge, City of Fort Worth

Mr. Richard Risinger, Prosecutor, City of
Pasadena

Ms. Margaret Robbins, Program Director,
TMCEC, Austin

The Honorable Sharon Hatten, Municipal Court
Judge, City of Midland

The Honorable Jennifer Rymell, Municipal Court
Judge, City of Fort Worth

Ms. Catherine Schmid, Consultant, Austin

Ms. Jane Shafer, Victims Advocacy Council,
San Antonio

Mr. Marshall Shelsy, Staff Attorney, Harris Co.
Criminal Courts at Law

The Honorable Robin Smith, Municipal Court
Judge, City of Midland

Officer Richard Smith, SAPD Training Academy,
San Antonio

Academic Year 2000 Calendar for All TMCEC Schools

March 7-8, 2000

Court Administrators/Prosecutors 12-Hour Program

Red Lion Hotel
6121 North IH35
Austin, TX 78752
512/323-5466

March 21-22, 2000

Judges/Clerks 12-Hour Program

Sheraton Dallas Brookhollow Hotel
1241 W. Mockingbird Lane
Dallas, TX 75247
214/630-7000

April 11-12, 2000

Judges/Clerks 12-Hour Program

Amarillo Ambassador Hotel
3100 I-40 West
Amarillo, TX 79102
806/358-6161
800/817-0521

April 24-25, 2000

Low Volume Courts Judges/Clerks 12-Hour Program

Beaumont, TX
235 W. 10th Street
Beaumont, TX 77705
409/842-3600

Judges: May 8-9, 2000

Clerks: May 10-11, 2000

Judges/Clerks 12-Hour Program

Radisson Resort South Padre Island
500 Shore Boulevard
South Padre Island, TX 78597
956/761-6511

Ms. Joyce Snay, Director of Texas Municipal
Clerks Association, Denton

The Honorable Dan Solis, Municipal Court
Judge, City of Dallas

Officer Scott Stephens, Senior Police Officer,
Crime Prevention Team, Austin

Ms. Jennifer Sullivan, Court Clerk, City of Sealy

The Honorable Donna Thomas, Municipal Court
Judge, City of Morgan's Point

Ms. Gisela Triana, Attorney at Law, Austin

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

The Honorable Joseph W. Varela, Associate
Judge, City of Houston

May 26-28, 2000 (Tentative)

Level III Clerks Assessment Clinic

Port Allen Area
Location to be determined

June 5-6, 2000

Judges/Clerks 12-Hour Program

El Paso Marriott
1600 Airway Boulevard
El Paso, TX 79925
800/228-9290
915/779-3300

June 26-27, 2000

Court Administrators/Prosecutors 12-Hour Program

Nassau Bay Hilton & Marina
3000 NASA Road One
Houston, TX 77058
281/333-9300

July 10-14, 2000

New Judges/Clerks 32/24-Hour Program

Hilton Austin North & Towers
6000 Middle Fiskville Road
Austin, TX 78752
512/451-5757

August 11-13, 2000

Level III Clerks Assessment Clinic

Dallas/Fort Worth Area
Location to be determined

The Honorable Ken Vitucci, Municipal Court
Judge, Austin

Ms. Lisa Voigt, Former Chief Prosecutor, City of
San Antonio

The Honorable Lory Warton, Former Municipal
Court Judge, City of Sweetwater

Ms. Julie Weckar, Prosecutor's Assistant,
Denton

The Honorable David Williams, Municipal Court
Judge, City of Dallas

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

**TEXAS MUNICIPAL COURTS EDUCATION CENTER
1999-2000 REGISTRATION FORM**

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

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

Last Name: _____ First Name: _____ MI: _____

Social Security #: _____ Male/Female: _____

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

I want to attend the _____ hour Judge Clerk Court Administrator Prosecutor
seminar in _____ on _____.
[city] [date]

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, three nights at the 24-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.

Arrival date: _____ Smoker Non-Smoker

COURT MAILING ADDRESS

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

Street: _____ City: _____ Zip: _____

Office Telephone #: _____ Court #: _____ 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

Prosecutor (A registration fee of \$250/\$100 must accompany registration form.)

Other: _____

I certify that I am currently serving as a municipal court 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 ten (10) 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. Payment is required ONLY for the prosecutors program and assessment clinics; payment is due with registration form.

Participant Signature _____

Date _____

TMCEC • 1601 Rio Grande, Suite 550 • Austin, TX 78701 • FAX 512/435-6118

Seventh Annual Prosecutor Skills Seminar

Red Lion Hotel 6121 North IH35 Austin

TENTATIVE AGENDA

TUESDAY, MARCH 7, 2000

8.0 MCLE

- 6:45 – 8:00 a.m. *Breakfast and Registration*
- 8:00 a.m. **Welcome and Announcements**
Lauren O'Conner, Chief Prosecutor, City of San Antonio
- 8:00 – 9:00 a.m. **Chapter 45 Update**
Robert Richter, Municipal Court Judge, City of Missouri City
- 9:15 – 10:00 a.m. **DSC and Deferred**
James D. Bethke, Special Counsel to Trial Courts, Office of Court Administration, Austin
- 10:00 – 11:00 a.m. **Contempt**
Robin Smith, Municipal Court Judge, City of Midland
- 11:00 – 12:00 noon **Legal Ethics**
Robert Kepple, General Counsel, Texas District and County Attorneys Association
- 12:00 – 1:00 p.m. *Lunch*
- 1:00 – 2:00 p.m. **Evidence**
Betty Marshall, Assistant State's Attorney, Office of the State Prosecutor Attorney, Austin
- 2:15 – 3:00 p.m. **Jury Charges**
Jade Meeker, Attorney at Law, Austin
- 3:00 – 4:00 p.m. **Juveniles**
Robert O. Dawson, Bryant Smith Chair in Law, University of Texas School of Law, Austin
- 4:00 – 4:45 p.m. **Possession**
Charles (Chuck) Bubany, George Herman Mahon Professor of Law, Texas Tech University, Lubbock
- 4:45 – 5:30 p.m. **Motion and Trial Practical Skills**
Daniel E. Hollifield, Chief Prosecutor, City of Fort Worth

WEDNESDAY, MARCH 8, 2000

4.0 MCLE

- 6:45 – 8:00 a.m. *Breakfast*
- 8:00 – 8:45 a.m. **Traffic Law**
Jeff Moore, Assistant Attorney General, Municipal Affairs Division, Attorney General's Office, Austin
- 9:00 – 10:00 a.m. **Ordinances**
Sonny Hood, Assistant City Attorney, City of Austin
- 10:00 – 11:00 a.m. **Nuisance Abatement and Code Enforcement**
Robert Doggett, Assistant City Attorney, City of Dallas
Michael Acuna, Assistant City Attorney, City of Dallas
Katrina Anderson, Assistant City Attorney, City of Dallas

	BREAKOUT 1	BREAKOUT 2
11:00 – 12:15 p.m.	Courts of Record: HB731 Dottie Palumbo (Moderator) Assistant General Counsel, Texas Municipal League, Austin, Lauren O'Conner, Chief Prosecutor, City of San Antonio; Mike Chitty, Assistant Chief Prosecutor, City of Houston; Betsy Elam, Taylor, Olson, Adkins, Sarlla and Elam, Fort Worth	Specialty Courts and Dockets Elizabeth Earle, Presiding Judge, Downtown Austin Community Court; Kimberly Piechowiak, Assistant City Attorney, City of San Antonio; and Lynn Bollish, Assistant City Attorney, City of Carrollton

12:15 p.m. *Adjourn Seminar*

NOTE: This program will be repeated on June 26–27, 2000 in Houston at the Nassau Bay Hilton. A second registration brochure will be mailed out in April.

REGISTRATION FORM Prosecutor Skills Seminar Register by February 21, 2000

Name _____

Soc. Sec. # _____

HOUSING INFORMATION Housing Deadline: February 21, 2000

- Yes, I need a single-occupancy room.
- Yes, I need a double-occupancy room.
- No, I do not need a room at the seminar.

Arrival date _____

- Smoker Non-Smoker

COURT MAILING ADDRESS

Office Telephone _____

Office Fax _____

E-mail _____

City Represented _____

Date Appt/Elect/Hired _____

Years Experience _____

- Full Time Part-time
- \$250 seminar fee due w/registration for municipal prosecutors (fee includes two nights at hotel).
- \$100 seminar fee due w/registration for municipal prosecutors not requesting housing.
- \$300 seminar fee due w/registration for non-municipal prosecutors.
- Send me information for the June Houston program.

I certify that I am currently a prosecutor in the State of Texas. I agree that I will be responsible for any costs incurred if I do not cancel ten working days prior to the seminar.

Participant Signature _____ Date _____

Fill out and return to:

TMCEC
1601 Rio Grande #550, Austin, TX 78701
512/320-8274 or 800/252-3718
Fax 512/435-6118

Include payment with registration.
Make checks payable to TMCEC.

ALTERNATIVE JUDICIAL EDUCATION

Experienced municipal court judges who have completed two years of TMCEC courses may opt to fulfill the 12-hour mandatory judicial education requirements for 1999-2000 by attending a course offered by an approved continuing legal education provider. The accredited providers are the ABA Traffic Seminar, American Academy of Judicial Education, The National Judicial College, State Bar of Texas Professional Development Program, Criminal Defense Lawyers Project, Harvard Law School, Houston Law School and Foundation, Texas Juvenile Probation Commission, Texas Municipal Courts Association, and the Texas Justice Courts Training Center. The course must relate to the jurisdiction of the municipal courts. Judges may only "opt-out" every other year. Judges are asked to complete an intent form prior to April 30, 2000 or they will be required to attend a TMCEC course. If you have questions, please contact Hope Lochridge at the Center (800/252-3718).

**TEXAS MUNICIPAL COURTS EDUCATION CENTER
1999-2000 INTENT TO ATTEND AN ALTERNATE PROGRAM
CONTINUING JUDICIAL EDUCATION FOR MUNICIPAL COURT JUDGES**

INTENT FORM

(To be completed before you have attended an approved alternative course. This is to ensure that the course meets the requirements. Once reviewed by the TMCEC Executive Director, a letter of approval will be sent to the judge. Upon completion of the approved course, the judge should send an affidavit or certificate documenting attendance.)

Social Security Number [required]: _____

Full Name: _____

Appointment Date: _____ Telephone Number: _____

Court Address: _____

Sponsor _____ Name of Program _____

Date of Program _____ # of Hours _____

Date _____ Signature _____

Deadline to return form to Texas Municipal Courts Education Center: April 30, 2000

Return form to: TMCEC 1601 Rio Grande, Suite 550 Austin, TX 78701 or send by FAX 512/435-6118

Date: _____

Name: _____

Address: _____

City, State, Zip Code: _____

Re: Response to Request for Public Access to Judicial Records Request

Dear _____:

I am in receipt of your correspondence dated _____. This letter was received on _____. It is my understanding that you are making a request for "judicial records" pursuant to Rule 12, Texas Rules of Judicial Administration. In your letter, you requested:

[Insert what was requested]

It is my opinion that your request seeks records that are exempted by Rule 12.2 and 12.3 and, thus, by definition, are not "judicial records." Rule 12 expressly states:

"Judicial record means a record made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function, regardless of whether that function relates to a specific case. A record of any nature created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record."

Pursuant to Rule 12.9, Texas Rules of Judicial Administration, you have the right to appeal my decision. If you wish to do so, please direct your timely appeal to:

Mr. Jerry Benedict
Administrative Director
Office of Court Administration
P.O. Box 12066
Austin, TX 78711-2066

Although I believe the records you requested under the Public Access to Judicial Records (Rule 12) does not apply to your request, you may have a right to inspect the records under the "common law" right of the public to inspect court records. However, there are some exceptions.

If you wish to make a request under the "common law" right, you may contact the court to set a time for the inspection. The clerk responsible for processing these requests is _____ [name] _____ and can be contacted at _____ [address and telephone number] _____.

Sincerely,

Presiding Judge

Appreciation is expressed to Judge Kevin R. Madison of Austin (Cedar Park, Lakeway, Bee Caves, Briarcliff) for the development of this form letter.

RULE 12

Last Spring the Supreme Court of Texas promulgated Rule 12 (effective April 1, 1999). It is the topic of a presentation at most TMCEC 12-hour judges programs this year.

Rule 12 applies to requests for public information regarding administrative records, **not** adjudicative records, such as complaints, subpoenas, warrants, and judgments.

TMCEC suggests that all judges review what records are retained in their offices and are now covered by the provisions of Rule 12. A

copy of Rule 12 is available upon request from TMCEC or may be located on-line at www.supreme.courts.state.tx.us/rules/RJA. It was reprinted in the May, 1999 issue of this newsletter.

See Sample Form on Page 23 in this newsletter.

Shown below are examples of administrative records.

- Telephone records
- Court budget information
- Docket information

- Judge's scheduling information
- Judge's meetings and activities

Rule 12.5 lists exemptions that include home address and family information, records that constitute an invasion of privacy (doctor's appointments, employment or volunteer applications, personnel records), and security plans.

TEXAS MUNICIPAL COURTS EDUCATION CENTER
1601 RIO GRANDE, SUITE 550
AUSTIN, TX 78701-1149
www.tmcec.com



Change Service Requested

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.