

Municipal Court Recorder

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ATTORNEY GENERAL OPINION UPDATE

Compiled by Ryan Kellus Turner
Program Attorney, TMCEC and
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The following are summaries of Texas Attorney General Opinions pertinent to municipal law and municipal court practice issued since January 1999. If you have Internet access and wish to download or print any of these opinions in their entirety, visit the TMCEC home page at www.tmcec.com and click on the link to the Office of the Attorney General.

What Constitutes "Security Hardware" under the Courthouse Security Fund is Expressly Limited

Given the legislative history and the express terms of Article 102.017(d)(9) of the Code of Criminal Procedure, the Courthouse Security Fund does not authorize a commissioners court to expend monies from the courthouse-security fund to purchase clip-on microphones for deputy sheriffs' portable radios. JC-0014 (3/8/99)

Note: The 76th Legislature amended Art. 102.017, C.C.P. The amendment repealed the words "the following" and added the word "including." The Code

Construction Act defines the term "including" to be a term of enlargement, not a term denoting exclusivity. Sec. 311.005(13), G.C. There is no legislative history in HB 1177 indicating the purpose of the change.

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CLERKS' CERTIFICATION PROGRAM SURVEYED

By Karen Meyers
Communications Assistant, TMCEC

Clerks play an important role in the municipal court system. Although they are not required to attend judicial education seminars like judges, many of them do in order to stay up-to-date on new laws and procedures. Some clerks even go a step further and participate in the certification process which includes attending a certain number of hours of training and passing a test at each level of the certification program.

The Texas Municipal Court Clerk Certification Program has three levels. Currently, 193 municipal court clerks or administrators are certified at Level I, 49 at Level II and none at Level III.

TMCEC has surveyed the clerks and court administrators certified at Level II to see what they thought of the

certification program. One of the questions asked was, "Do you feel the clerks certification program has helped you with your duties as a court clerk/administrator?" Most of the responses indicated that the certification program has helped greatly.

Beckie Marino from the Galveston Municipal Court said, "It has made me more aware of the laws and how they apply. It helped me understand the priorities and the duties of everyone involved."

Jennifer Sullivan from the Sealy Municipal Court also agreed that the certification program has helped her with her duties as a court clerk. "It forced me to 'brush up' on areas that my small court does not usually face," said Sullivan.

Susan Woodson from the Savoy Municipal Court said, "It gave me an in-depth knowledge of the procedures, laws and duties that are associated with municipal court."

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AROUND THE STATE

HANDGUN SUSPENSION

During the 76th legislative session, the Legislature enacted House Bill 2124 which provides that courts may suspend the concealed handgun license of a license holder who is the subject of an emergency protection order issued under Article 17.292, Code of Criminal Procedure, or a protective order issued under Title 4, Family Code. The bill requires a court that issues an order suspending a concealed handgun license to send a copy of the order to the Department of Public Safety. On receipt of such an order, DPS will record the suspension, report the suspension to law enforcement agencies, and demand surrender of the suspended license from the license holder.

Please forward copies of any protective order suspending a concealed handgun to the following address:

Attn: Suspension/Revocation
Texas Department of Public Safety
Concealed Handgun Licensing
Section #0235
P.O. Box 4143
Austin, TX 78765-4143

You may also fax copies to:

512/424-7284

Attn: Suspension/Revocation

Please contact DPS at 512/424-5611 or 512/424-5612 if you have further questions.

OCA ANNUAL REPORT

The Office of Court Administration (OCA) has released its Annual Report for FY 99. The Report contains demographic profiles of the Texas appellate and trial judges. When comparing the statistics for FY 89 with FY 99, the data shows that over the last 10 years the percentage of municipal judges that attended law school has increased from 36 percent to 47 percent, and the average length of service has increased from 6 years, 9 months to 9 years, one month.

- Number of Municipal Judges: 1,233
- Age Range of Municipal Judges: 22 to 89 years old
- Number of Municipalities with Courts: 854
- Percentage appointed: 98 percent
- Percentage attended law school: 47 percent

The Report also contains the case disposition records of the 854 cities with courts. Last year, TMCEC worked with OCA to modify the monthly case disposition reports so that the juvenile activity in Texas municipal courts was captured, as well as the number of emergency protection orders issued.

Highlights of the reports are:

- Only 2 percent of the cases disposed at trial resulted in appeals, down from nearly 8 percent in 1990.
- Of the 1,222,781 cases that went to trial and were not dismissed, 99 percent were tried before a judge alone.
- Municipal courts issued an arrest warrant approximately every 16.7 seconds.

Total of Reported Activity for the Year Ended August 31, 1999

90 Percent Reporting Rate
9,204 Reports Received Out of a Possible 10,248

	TRAFFIC MISDEMEANORS		NON-TRAFFIC MISDEMEANORS		REPORTED TOTALS
	Non- Parking	Parking	State Law	City Ordinance	
CASE DOCKET ACTIVITY:					
NEW CASES FILED	4,997,491	1,109,183	941,226	239,565	7,287,465
Dispositions Prior to Trial:					
Deposit Forfeited	50,247	554	17,981	1,817	70,599
Fined	1,569,876	647,325	276,872	59,852	2,553,925
Cases Dismissed	429,821	59,109	94,007	46,786	629,723
Dispositions at Trial:					
Trial by Judge					
Guilty	889,830	12,541	218,078	46,790	1,167,239
Not Guilty	35,667	658	7,971	2,925	47,221
Trial by Jury					
Guilty	5,017	72	807	1,007	6,903
Not Guilty	876	17	389	136	1,418
Dismissed at Trial	623,516	5,874	166,084	55,680	851,154
Cases Dismissed After:					
Driving Safety Course	456,238				456,238
Deferred Disposition	423,065	1,058	43,835	17,327	485,285
Proof of Financial Responsibility	447,720				447,720
Compliance Dismissal	215,973				215,973
TOTAL DISPOSITIONS	5,147,846	727,208	826,024	232,320	6,933,398
COMMUNITY SERVICE ORDERED	86,144	243	20,025	4,006	110,418
CASES APPEALED	15,427	198	1,868	542	18,035
JUVENILE ACTIVITY:					
Alcoholic Beverage Code Offenses Filed					32,869
DUI of Alcohol Offenses Filed					2,540
Health & Safety Code Offenses Filed					14,685
Transportation Code Offenses Filed					81,260
Truancy or Failure to Attend Hearings					4,360
All other Non-Traffic Fine-Only Offenses					80,026
Waiver of Jurisdiction of Non-Traffic cases					3,879
Education Code Violations Filed					6,888
Warnings Administered					4,845
Statements Certified					2,113
OTHER ACTIVITY:					
Safety Responsibility and Driver's License Suspension Hearings Held					5,550
Search Warrants Issued					4,782
Arrest Warrants Issued					1,992,988
Magistrate Warnings Given					140,887
Emergency Mental Commitment Hearings Held					175
Emergency Protective Orders					3,353
TOTAL REVENUE					\$407,447,777

Excerpt from *Annual Report of the Texas Judicial System Fiscal Year 1999*, Austin: Office of Court Administration.

- Juvenile activity: 81,260 Transportation Code offenses, 32,869 Alcoholic Beverage Code offenses, and 2,540 DUI of alcohol offenses were filed.
- Emergency protection orders issued: 3,353.
- The number of new cases filed increased by nearly 3 percent in FY 99.
- Of the total cases filed, traffic accounted for 84 percent.
- Revenue collected by reporting courts totaled \$407,447,777, a 10 percent increase over FY98.

Regretfully, the reporting rate for Texas municipal courts dropped from 93 percent in FY 98 to 90 percent in FY 99. All judges and court personnel are encouraged to submit these reports to OCA in a timely fashion.

Copies of the Report may be obtained at no charge by calling or writing the Office of Court Administration (512/463-1625 or P.O. Box 12066, Austin, Texas 78711). Judges and court support personnel may find the data useful in comparing their court's performance with that of other courts of similar size.

COURT COSTS STUDIED

The Comptroller's Office was directed by the Legislature (Senate Concurrent Resolution 12) to "develop strategies for increasing the efficiency and reducing the complexity of fee collection and dispersal by county and municipal clerks and to submit recommendations to the Legislature." A series of meetings and public hearings are being held to identify the issues related to court costs and fees. On April 18, 2000, the Senate Criminal Justice Committee held a hearing to evaluate the collection efforts for

criminal fines and costs imposed by courts to determine how collection efforts may be enhanced, including incentives to increase collections. The Committee is charged with determining what fees may be imposed on offenders and which entities are entitled to a portion of the collected fees. Judges and court personnel that have suggestions or issues to raise should contact the chair of the Committee (Senator Ken Armbrister, P.O. Box 12068, Austin, TX 78711) or the committee staff members (Kelly Gilbert or Brian Jammer at 512/463-0345), the Comptroller of Public Accounts (Carole Keeton Rylander, State Comptroller, P.O. Box 13528, Austin, TX 78711-3528), or the Comptroller's staff (Debbi Bailey, 512/475-0624 or debbi.bailey@cpa.state.tx.us and Elizabeth Vargas, 512/475-1073 or elizabeth.vargas@cpa.state.tx.us).

A.G. UPDATE continued from Page 1

Art. 102.017. Court Costs; Courthouse Security Fund; Municipal Court Building Security Fund (Excerpt)

(a) A defendant convicted of a felony offense in a district court shall pay a \$5 security fee as a cost of court.

(b) A defendant convicted of a misdemeanor offense in a justice court, county court, county court at law, or district court shall pay a \$3 security fee as a cost of court. The governing body of a municipality by ordinance may create a municipal court building security fund and may require a defendant convicted of a misdemeanor offense in a municipal court to pay a \$3 security fee as a cost of court.

(c) In this article, a person is considered convicted if:

- (1) a sentence is imposed on the person;
- (2) the person receives community supervision, including deferred adjudication; or
- (3) the court defers final disposition of the person's case.

(d) The clerks of the respective courts shall collect the costs and pay them to the county or municipal treasurer, as appropriate, or to any other official who discharges the duties commonly delegated to the county or municipal treasurer, as appropriate, for deposit in a fund to be known as the courthouse security fund or a fund to be known as the municipal court building security fund, as appropriate. A fund designated by this subsection may be used only to finance ~~the following~~ items when used for the purpose of providing security services for buildings housing a district, county, justice, or municipal court, as appropriate, including:

- (1) the purchase or repair of X-ray machines and conveying systems;
- (2) handheld metal detectors;
- (3) walkthrough metal detectors;
- (4) identification cards and systems;
- (5) electronic locking and surveillance equipment;
- (6) bailiffs, deputy sheriffs, deputy constables, or contract security personnel during times when they are providing appropriate security services;
- (7) signage;
- (8) confiscated weapon inventory and tracking systems;
- (9) locks, chains, alarms or similar security devices ~~[hardware]~~;
- (10) the purchase or repair of bullet-proof glass; and
- (11) continuing education on security issues for court personnel and security personnel.

(e) The courthouse security fund shall be administered by or under the direction of the commissioners court. The municipal court building fund shall be administered by or under the direction of the governing body of the municipality.

Enforcement of Traffic Laws on Privately Owned Streets

Meadowlakes is a Type A general-law municipality with an estimated

population of 1,100 residents. The Meadowlakes Property Owners Association (“MPOA”), a private association, owns all of the streets located within the city limits of Meadowlakes. None of these streets have been dedicated to the City of Meadowlakes for use by the general public. The MPOA also maintains a privately owned gatehouse at the only point of entrance to or exit from the city to regulate access on the private streets.

Provisions in the Transportation Code, Title 7, Subtitle C, relating to the operation of a vehicle, apply only on public roadways and not on private roads or streets unless expressly applicable. Accordingly, the City of Meadowlakes has no authority to enforce state and municipal traffic laws on privately owned streets within its boundaries. A peace officer has no authority to issue a citation for a traffic offense on the private streets, and if such a citation is issued, it may not be prosecuted.

Article III, Sec. 52 and Article XI, Sec. 3 of the Texas Constitution prohibit the City of Meadowlakes from using public monies to enforce state and municipal traffic laws on its private streets. JC-0016 (3/8/99)

Municipal Court Jurisdiction of Ordinances Prohibiting Outdoor Burning within 5,000 Feet Outside City Limits

Where a municipality is authorized to adopt a nuisance ordinance applicable to conduct occurring outside city limits (*i.e.*, “general-law cities” as defined in Sec. 217.042 of the Local Government Code) and where the municipality has adopted such an ordinance, a non-record municipal court has implied jurisdiction over cases arising from violations of the ordinance that occur outside city limits in the city’s extraterritorial jurisdiction. JC-0025 (3/23/99)

Validity of Home-Rule Ordinance Regulating Commercial Garbage and Construction Debris

A home-rule municipality may adopt an ordinance requiring residential construction contractors to use the franchisee selected by the city for weekly residential and commercial garbage removal to collect and haul customary debris from a construction site. JC-0035 (4/19/99)

County Authority to Build, Maintain or Improve City Streets that Do Not Connect with County Roads or State Highways

A county may build, maintain or improve city streets that are not integral parts of or connecting links with county roads or state highways in accordance with Sec. 251.012 of the Transportation Code, if such expenditures serve a county purpose. However, a county may not expend proceeds of bonds issued or taxes levied pursuant to Article III, Sec. 52(b) or (c) of the Texas Constitution for such city streets.

Attorney General Opinion JM-892 (1988) and Letter Opinion 97-084 are overruled to the extent they provide that a county may expend county funds in accordance with Sec. 251.012 and its predecessor only to improve city streets that are integral parts of or connecting links with the county roads or state highways. JC-0036 (4/19/99)

Validity of an Ordinance Prohibiting Organized Pigeon Shoots in a Home-Rule City

A home-rule city may not pass an ordinance forbidding the killing of feral pigeons, since such killing is explicitly authorized by Sec. 64.002(b) of the Parks and Wildlife Code. The holding of an “organized pigeon shoot” may however constitute cruelty to animals, which is prohibited by Sec. 42.09 of the Penal Code. The Attorney General’s Office cannot

answer in the abstract the question of whether a city ordinance regulating or prohibiting such pigeon shoots is preempted by Sec. 1.08 of the Penal Code. However, the Attorney General opines that Sec. 1.08 does not prohibit all city legislation on a subject considered in the Penal Code, so long as the state law and the city ordinance are not in conflict. JC-0048 (5/17/99)

Whether a County Attorney May Serve as City Attorney if the Municipality is Located in the Same County

A county attorney who is not subject to the Professional Prosecutors Act (see Chapter 46 of the Government Code) may simultaneously serve as an attorney employed at the will and under the direction of a city council of a city located in the county. JC-0054 (5/26/99)

Handicap Parking

A van-access aisle adjacent to a van-accessible parking space is an “architectural improvement designed to aid persons with disabilities” for purposes of Sec. 681.011(c) of the Transportation Code. Accordingly, parking a vehicle so as to block a van-access aisle is an offense under Sec. 681.011(c) and punishable under Sec. 681.011(g)-(k). JC-0077 (7/14/99)

Inquests

Neither a county judge nor a municipal court judge may conduct an inquest. Rather when the appropriate justice of the peace is unavailable, the county judge must appoint a temporary justice of the peace to conduct the inquest. Sec. 49.07(c) of the Code of Criminal Procedure provides that a municipal court judge and judge of a county court at law are authorized only to notify a county judge or justice of the peace of the need to appoint a temporary justice. (In the absence of a justice of the peace, an individual in possession of the deceased or a peace officer must notify the nearest available justice of the peace, municipal court

judge, county judge, or county court at law judge of the county in which the death occurred or the body was found in order to avoid prosecution under 49.07(d)). JC-0083 (7/20/99)

Truancy Jurisdiction

A juvenile court is without jurisdiction to conduct an adjudication hearing for a person referred as a truant by a justice or municipal court if the conduct that forms the basis for the referral occurred after the person attained the age of 17. JC-0103 (9/1/99)

Note: In 1997, the Legislature increased the age of compulsory attendance by one year, changing the definition of child required to attend school to include a person who is 17 years of age. Sec. 25.094(c) of the Education Code, which creates the offense of "failure to attend school," is a Class C misdemeanor and may be prosecuted in a municipal or justice of the peace court. That statute also provides authority for a court to enter an order that includes one or more of the sanctions listed in Sec. 54.021(d) of the Family Code. These sanctions apply to a child who is truant. If a child violates an order requiring one of these sanctions, Sec. 25.094(d), E.C. requires the court to transfer the complaint against the child, together with all pleadings and orders to the juvenile court for the county in which the child resides. However, the juvenile court, which derives its jurisdiction from statutes, has jurisdiction only over conduct committed before the age of 17.

Compelling Appearance of Juvenile Custodian

With respect to a juvenile who is charged with failure to attend school, Sec. 54.021(g) of the Family Code specifically authorizes a court with jurisdiction of truancy cases to compel the juvenile's court appearance by summoning the custodian to appear and to bring the juvenile. Juvenile

courts may waive jurisdiction of such cases on a case by case basis or by issuing a blanket waiver that is effective for a one-year period. JC-0110 (9/9/99)

"Civil Standbys" Defined

Article 5.045 of the Code of Criminal Procedure protects law enforcement officers who accompany victims of domestic violence to their vacated residence for purpose of collecting personal property from civil and criminal liability related to the wrongful appropriation of personal property by the victim. Protective orders regulate the behaviors of perpetrators, not victims. Accordingly, Art. 5.045 is intended to provide standby assistance to victims when they have need to be in temporary proximity of their victimizer, not vice versa. JC-0112 (9/22/99)

Conditional Pretrial Diversion

A county attorney may not condition an offer of pretrial diversion upon a payment of \$1,500 by the offender to a nonprofit organization incorporated by the county attorney and his assistant county attorneys. JC-0119 (9/28/99)

Role of Sheriff in Municipal Law Enforcement

The sheriff is conservator of the peace in the county and has authority to perform law enforcement services throughout the county, including the area within the boundaries of an incorporated city, absent an interlocal contract with the city. It is for the sheriff, in the exercise of reasonable discretion, to determine how the law enforcement efforts of his office should be allocated to different areas of the county. The fact that municipal residents pay county taxes does not require the county sheriff to provide an equal level of law enforcement protection within municipal boundaries as he does in the unincorporated areas, as long as there is a rational basis for

providing different levels of law enforcement services to different areas of the county. JC-0125 (10/13/99)

Authority of a Home-Rule Municipality to Limit Building Permits

A home-rule municipality may implement a growth-management plan that apportions or "caps," the number of building permits the municipality will issue in a specified time period even in the absence of an emergency. The municipality must provide appropriate substantive and procedural due process, and the municipality may not attempt to apply its growth-management plan to building permit applications filed prior to the adoption of the plan. (See Sec. 245.002(a) of the Government Code.) The denial of a building permit application may constitute an unconstitutional taking for which the municipality must compensate the landowner.

A home-rule municipality may adopt a growth-management plan that limits the number of residential building permits, and not the number of nonresidential permits, the municipality will issue in a given time period. Depending on the facts of a particular situation, such a growth-management plan may implicate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. JC-0142 (11/10/99)

Authority of a Municipality to Regulate or Prohibit Street Vendors

A Type A general-law city may not prohibit the occupation or business of street vending, but it may, in general, prohibit or reasonably regulate by ordinance the sale of merchandise on its city streets, sidewalks and other public places. It may also require by ordinance that vendors obtain a permit as a condition to selling merchandise in the city and charge a reasonable fee. The city may regulate but not prohibit street vendors from going on private residences to sell their goods. If

the state has authorized or licensed a particular occupation or activity that is the subject of street vending, a city might be precluded from requiring a permit as a condition of engaging in that activity within the city. Issuance of a sales tax permit to a vendor, however, is not such state authorization or license as to preclude the city from requiring a city permit. An ordinance regulating street vending may not, broadly speaking, unreasonably discriminate against persons subject to the ordinance, infringe on personal fundamental rights, or interfere with interstate commerce. JC-0145 (11/19/99)

SURVEYED continued from Page 1

Although most of the responses were positive, one clerk did not feel the certification program has helped her with her duties as a court clerk. She said, "I came away from the experience drained, aggravated, depressed and feeling like I was not worthy of my job because of the difficulty I had with questions."

Another question dealt with the issue of monetary compensation for becoming certified. Many cities take certification into consideration during yearly evaluations. The Plano and Victoria Municipal Courts have made certification part of the job requirement. Plano requires clerks to attain Level I certification within 18 months of employment. The Midland, Cleburne and San Angelo Municipal Courts offer additional compensation as each level is attained.

Finally, clerks were asked, "Would you recommend this program to other court clerks/administrators?"

Vicki Smith from the Plano Municipal Court stated, "Yes, I would definitely recommend the program. Court has become so extremely complex over the last several years in both technology

and legislative mandates. Solid, dedicated, responsible training is imperative in order to function at competent levels in our courts today."

"I recommend the program to other clerks. I believe the most important part of our job is to ensure that due process of the law is maintained and to provide the best possible service to our public," Elaine Bourgoin from the Wichita Falls Municipal Court stated.

Jeanie Roumell of the Keller Municipal Court also recommends the program to other court clerks and administrators. "The knowledge you receive is well worth the tension of wondering if you'll pass the test," said Roumell.

All in all, it seems that most of the clerks feel the certification program is helpful with their duties in the municipal courts, however, if more of the courts provided monetary compensation to the clerks for their achievements, clerks might be more interested in the program.

For more information on the Clerks Certification Program, see Page 11 of this newsletter. This program is sponsored by the Texas Court Clerks Association, the Texas Municipal Courts Association and the Texas Municipal Courts Education Center.



LAW DAY 2000

Every year, on or around May 1, Law Day is celebrated. The American Bar Association (ABA) is joined by national organizations, state and local

bars, businesses, and schools in conducting thousands of programs on the rule of law in a constitutional democracy. This year's emphasis is *Speak Up for Democracy and Diversity*.

Law Day is a great opportunity for courts to reach out to the public by offering programs in schools, in community centers, to civic groups, and in the local courts. The ABA has a vast set of resource materials available for local use, including speeches, posters, mock trials, handouts, brochures, and lesson plans. Materials are available on-line [www.abanet.org/publiced/lawday] or by calling 800/285-2221 or by fax 312/988-5494.

Shown below are suggestions from the ABA for serving as a classroom speaker.

When You're Speaking In Class

Work with the teacher. Work with the teacher before your session. Let him or her know what you plan to do and provide background materials. Ask what the class has been studying, and integrate your session with classroom studies.

Get off to a good start. The first few minutes of a presentation may make or break it. Get the students involved immediately -- either with a startling statement that grabs their attention or a question they can't help but want to answer.

Talk with the students, not at them. A lecture may work for a professor in law school, but it is not the best way to approach elementary or even secondary students.

Work the room. Don't stand in one place; move around. Get the students involved. Encourage participation by your own enthusiasm for the topic.

Be flexible. Be prepared to vary

from your lesson plan a bit. When you do generate interest and enthusiasm in the students, their questions and comments may lead you away from your plan. Encourage students' input and allow digression, but look for an opening to get back on track as soon as you can.

Talk to students in language they can understand. That doesn't mean you have to talk down to them. Use some jargon, but explain what each term means. And use examples from students' experiences and analogies they can relate to.

Don't fake it. Know your subject. But if asked a question that you cannot answer, don't try to hide the fact from the students. Say, "that's a good question. I don't know the answer to it." If you try to improvise an answer, the students will know it very quickly and your credibility will be lost.

Be in control of the classroom. Some students may try to test you. If that happens, the teacher may intervene; then again, he or she may not. Try to handle the situation yourself. Let the students know you are in control of the classroom for the time you are there.

Don't get caught in the middle of a school controversy. This is especially true if the controversy pits students against the administration. Stress responsibility as well as rights when talking about the law.

Watch the clock. As interesting as you will be, most of the students' attention will parallel the class schedule. When the bell rings, they want out! Know when the class is over and time your presentation accordingly.

Adapted from *Law Day 2000 Planning Guide*, Chicago: American Bar Association, 2000.

PERFORMANCE STANDARDS

The National Center for State Courts (NCSC) has developed a set of performance standards to help guide court operations. Information on the standards, as well as sample forms and checklists, is available on the Internet at [www.ncsc.dni.us/research/tcps_web]. The material is recommended to all courts to assist with continuous improvement of court procedures. The standards are divided into five domains:

- Access to Justice
- Expedition and Timeliness
- Equality, Fairness and Integrity
- Independence and Accountability
- Public Trust and Confidence

For more information about this and other NCSC programs, call or write: National Center for State Courts, 300 Newport Avenue, P.O. Box 8798, Williamsburg, Virginia 23185 (757/253-2000 or 800/616-6160).

HELP US HELP YOU

In recent months the number of legal questions called into the Center has reached record numbers. To put the rise of telephone calls in perspective, consider the fact that there are 854 municipal courts in the Lone Star State and more than 3,500 judges, clerks and prosecutors. In contrast, while the Center is pleased to offer the 800 line as a premium service to the courts, it currently has only two staff members to answer legal questions.

In order that the Center may better serve all of its constituents please consider the following in utilizing the 800 line:

- Remember the Center only takes questions from judges, clerks and city attorneys (including county attorneys and designated municipal prosecutors). Please do not refer defendants, commercial vendors, members of your city council, or peace officers to the Center.
- While you may have come to rely on the 800 line as your first response and primary method of resolving court-related questions, we ask that you view it as your last resort.
- Before you decide to call, please make a concerted effort to locate the pertinent portions of relevant statutes (e.g., Penal Code, Code Criminal Procedure, Transportation Code, etc.). Please do not call without first having carefully examined the statute(s) in question.
- Questions pertaining to court costs, records and reporting, record management, local government issues, open record requests, and ethical dilemmas should be made directly to agencies specializing in the subject matter. (See Page 9 for a listing of such agencies).
- Judges with questions are asked to call in person rather than having clerks or other court personnel call on their behalf.
- Clerks should call only after consulting with their judges and after exhausting all local resources.
- The Center cannot give legal advice. Please do not attempt to utilize the legal resources of the

HELPFUL STATE AGENCIES/ ORGANIZATIONS

Court Costs and Quarterly Reporting

Comptroller of Public Accounts

111 East 7th Street

P.O. Box 13528

Austin, TX 78711-3528

800/531-5441, Ext. 34679

www.window.tx.gov

Driving Records and Traffic Reporting Issues

Department of Public Safety

5805 North Lamar

Austin, TX 78752

Records

512/424-2600

Traffic Reporting

Sheri Gipson

512/424-2028

www.txdps.state.tx.us

Document Management and Disposal Issues

Texas State Library and Archives

Commission

Records Management Assistance

512/452-9242

Local Government and Open Record Issues

Attorney General's Office

P.O. Box 12548

Austin, TX 78711-2548

Municipal Affairs Division

512/475-4683

www.oag.state.tx.us

Texas Municipal League

1821 Rutherford Lane, Suite 400

Austin, TX 78754-5128

512/719-6300

www.tml.org

Ethical Issues

Commission on Judicial Conduct

300 West 15th, Suite 415

Austin, TX 78711-2265

512/463-5533

Toll free: 877/228-5750

Approved DSC Schools

Texas Education Agency

2600 McHale Court, Suite 125

Austin, TX 78758-4443

512/997-6500

first decision from such an appeal.

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 00-001

RESPONDENT: J.B. Marshall, Jr.,
Presiding Judge, Pflugerville Municipal
Court

DATE: February 4, 2000

SPECIAL COMMITTEE: Judge Pat
McDowell, Judge Olen Underwood,
Judge B.B. Schraub, Judge Darrell
Hester, Judge Ray D. Anderson

The applicant is an individual who has requested that the Pflugerville Municipal Court allow him to view traffic citations for research he is conducting regarding "how the city of Pflugerville does business regarding traffic citations." The presiding judge of the municipal court has refused access to the traffic citation records on the ground that they are exempt under the provisions of Rule 12.5(d) of the Rules of Judicial Administration. The applicant has filed a petition for review of this denial of access.

The threshold issue in a Rule 12 appeal is whether the records are "judicial records," which are defined by Rule 12.2(d) as follows:

"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."

Traffic citation records pertain to the municipal court's adjudicative func-

Center in lieu of consulting your city attorney.

- Questions should not be submitted by means other than the 800 line.
- Please do not ask the Center to prepare a written response to your legal question.
- Please do not call the Center if your question pertains to a personal legal matter.

If you do call, please be patient. Your call will be returned in the order it is received. However, due to the high volume of telephone calls received and the importance of other services provided by the Center (e.g., program development, publications, court

visits), your calls may not be returned immediately.

JUDICIAL RECORDS DECISION

Last spring, the Supreme Court of Texas promulgated Rule 12 (effective April 1, 1999) concerning public access to a court's administrative (not adjudicative) records. Rule 12.9 provides that a person denied access to a judicial record may appeal the denial to the Administrative Director of the Office of Court Administration. A special committee is then formed to review the request. Following is the

tion and are created, produced and filed in connection with matters that are or have been before the municipal court. Thus, they are not judicial records within the meaning of Rule 12, and we cannot decide the question of whether they are exempt from disclosure. Accordingly, we can neither grant the petition in whole or in part nor sustain the denial of access to the requested record. Nevertheless, we will explain the duties of a court in relation to public access to case records of this type.

As previously discussed, Rule 12 is a new rule designed to define public access to judicial records, which are those records *not* related to a court's adjudicative function. Other records, which *are* related to a court's adjudicative function, are subject to other rules or laws. For purposes of this discussion, we will call those records "court records."

Rule 76a of the Texas Rules of Civil Procedure governs public access to civil court records. It provides that civil court records "are presumed to be open to the general public." They may be sealed only upon a showing of "a specific, serious and substantial interest which clearly outweighs ... this presumption of openness; [and] any probable adverse effect that sealing will have upon the general public health or safety; [and that] no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted."

Public access to criminal court records, such as those at issue here, are governed by common law and constitutional law. The common law right to public access was articulated by the United States Supreme Court in *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597, 98 S.Ct. 1306, 1312 (1978), as follows:

"It is clear that the courts of this

country recognize a general right to inspect and copy public records and documents, including judicial records and documents. In contrast to the English practice, ... American decisions generally do not condition enforcement of this right on a proprietary interest in the document or upon a need for it as evidence in a lawsuit. The interest necessary to support the issuance of a writ compelling access has been found, for example, in the citizen's desire to keep a watchful eye on the workings of public agencies"

The constitutional law relating to public access to criminal court records was summarized by the court in *Express-News Corp. v. MacRae*, 787 S.W.2d 451, 452 (Tex. App.-San Antonio 1990), as follows:

"The public's right to public trials under the First and Fourteenth Amendments to the United States Constitution includes a presumption that judicial records will be open to inspection by the press and public. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597, 98 S.Ct. 1306, 1312 (1978). This presumption of openness may be overcome by a countervailing interest, such as the defendant's right to a fair trial, but the reason for closure or sealing must be apparent and clearly articulated. *Richmond Newspapers v. Virginia*, 448 U.S. 555, 581, 100 S.Ct. 2814, 2829-30 (1980); *Houston Chronicle Publishing Co. v. Hardy*, 578 S.W.2d 495, 499 (Tex. App.-Corpus Christi, 1984), *cert. denied*, 470 U.S. 1052, 105 S.Ct. 1754 (1985)."

In *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992), the court conditionally granted a writ of mandamus against a trial court which had prohibited a newspaper from publish-

ing the identity of a rape victim which had already been disclosed in an indictment, a motion in limine and a charge to the jury. The court held that once they are filed with the court, court records become public records.

Although court records are not records covered by the Public Information Act (formerly "Open Records Act"), Texas Government Code Sec. 552.001 *et seq.*, several attorney general open records letters have discussed the issue, and found a right to public access. OR99-1825 (traffic citations are subject to disclosure under common-law right to copy and inspect court records and statutory law governing municipal courts); OR99-2611 (personal information such as place of employment, work and home telephone numbers of the accused which are found in traffic citations maintained by police department are not exempt from disclosure); OR99-0766 (traffic citations maintained by city are subject to Public Information Act); OR99-3698 (distinguishing between records maintained solely by municipal court and those also maintained by city).

For the reasons stated, this review committee can neither grant the petition in whole or in part nor sustain the denial of access to the requested records.

TEXAS COURT CLERK CERTIFICATION PROGRAM

Sponsors:

Texas Court Clerks Association (TCCA) in cooperation with the Texas Municipal Courts Education Center (TMCEC) and Texas Municipal

Courts Association (TMCA).

Eligibility Requirements:

All participants must be TCCA members in good standing.

Education

For Levels I and II, the applicant must provide proof that, within three years, the applicant has:

- A) attended
 - i) two annual conferences of the TCCA, or
 - ii) two annual conferences of the TMCA, or
 - iii) two annual conferences, one of TCCA and one of TMCA; or
- B) attended one annual conference of the TCCA or TMCA **and** successfully completed 16 hours of training sponsored by the TCCA (state or local chapter), the TMCA, the TMCEC, or other approved provider, or a combination thereof; or
- C) successfully completed 40 hours of training as sponsored by the TCCA (state or local chapter), TMCA, or TMCEC, or other approved provider, or a combination thereof.

Approved Providers for 1999-2000

- Texas Municipal Courts Association
- Texas Municipal Courts Education Center
- Texas Court Clerks Association
- National Association of Court Managers
- Institute for Court Management
- TCCA Local Chapters

Continuing Education

To maintain certification, a clerk must complete 12 hours of continuing judicial education hours each year.

Certification Tests

Participants in the program must pass a certification test at each of the three levels. These tests will be offered several times a year. There is a \$50 fee to take each exam. An individual may retake an exam until a passing grade of 70 or above is obtained for Levels I and II and a grade of 75 or above for Level III. After passing the exam, the clerk must apply for certification. Contact TMCEC for an application form.

Level I: Exam questions for Level I are taken from the TMCEC Level I study guide. The exam has 400 multiple choice and true or false questions. The topics in the Level I study guide are listed below:

- *The Courts: An Overview*
- *Authority and Duties*
- *Ethics*
- *Procedures Before Trial*
- *Trial Procedures*
- *Post-Trial Procedures*
- *State & City Reports*
- *Traffic Law*
- *Juveniles*
- *Communications, Time Management, Writing and Office Skills*

Level II: To take the Level II test, a clerk must have received Level I certification. Exam questions for Level II are taken from the Level II study guide. The exam has 430 multiple choice and true or false questions. The topics in the Level II study guide are listed below:

- *Equal Justice Under Law: Due Process, Equal Protection*
- *Ethics*
- *Overview of Processing Cases*
- *Code of Criminal Procedure & Penal Code*
- *Bond Forfeitures*

- *Juveniles*
- *Financial Management*
- *Records and Caseflow Management*
- *Legal Research*
- *Court Technology*

Level III: To take the Level III test, a clerk must have received Levels I and II certification. Exam questions for Level III are taken from books that cover the following topics:

- *Caseflow Management*
- *Human Resource Management*
- *Budgeting, Costs Analysis, Court Collections, & Internal Control*
- *Records Management*
- *Leadership*
- *Total Quality Management*
- *Office Management*

Level III participants must also complete 40 hours of court observation, write a journal documenting the observation, complete an assessment program, and attend annually the court administrators program offered by TMCEC.

Preparation

Municipal court clerks may attend each year one 12-hour or 24-hour TMCEC seminar that is funded by the Texas Court of Criminal Appeals. Level I and II study guides may be purchased from TMCEC for \$25 per set for each level. If a participant attends a pre-conference study session at a TMCEC 12-hour seminar, the study guides are included in the \$15 registration fee as pre-conference course materials. A set of materials can be borrowed from the TMCEC with a \$25 deposit for Levels I and II and a \$100 deposit for Level III that is refundable upon return of the guide or books. Clerks may duplicate at their own expense Level I and II study guides. Also, Levels I and II study guides

CLERKS continued on Page 16



STATE COMMISSION ON JUDICIAL CONDUCT

PUBLIC STATEMENT

No. PS-2000-1

As a result of recent complaints concerning judges who also serve as active law enforcement officers, the State Commission on Judicial Conduct believes that the interests of the judiciary and the public would be best served by issuing this public statement clarifying its position on the issue of whether a judicial officer may serve concurrently as judge and law enforcement officer. In expressing its condemnation of the practice, the Commission wishes to communicate to all members of the Texas judiciary its view that, by attempting to fulfill the requirements of both offices, a judge severely compromises the impartiality and independence of the judicial office.

In issuing this Public Statement, the Commission recognizes the existence of Attorney General Letter Opinion No. 92-35 (1992), which discusses the legality of serving in both roles. However, the Commission notes that an act that is legal is not necessarily an act that is ethical. Judges are members of the judicial branch of our government. Law enforcement officers are part of the executive branch. Each branch is separate from, but co-equal with, the other. Therefore, the Commission concludes that any judge who attempts to serve both branches cannot accomplish the task without impairing the effectiveness of one or both positions.

What remains the guiding factor in this analysis is the public's trust in the ability of a judge to remain impartial and fair while conducting judicial business. It is the opinion of this Commission that anyone who tries to serve the public as both judge and law enforcement irrevocably undermines the public's confidence in an impartial and independent judiciary. The Commission adopts this position without regard for whether an individual performs the dual roles in the same county or in two separate counties.

The Commission issues this public statement pursuant to the authority granted to it by Article V, Section 1-a(10) of the Texas Constitution.

This public statement is intended to help preserve the integrity of all judges in the State of Texas, to promote public confidence in the judiciary, and to encourage judges to maintain high standards of professional conduct.

Signed this 24th day of March, 2000.



Honorable William G. Arnot, Chairman
State Commission on Judicial Conduct



STATE COMMISSION ON JUDICIAL CONDUCT

PUBLIC STATEMENT

No. PS-2000-2

As a result of recent complaints concerning judges publicly endorsing other candidates for public office, the State Commission on Judicial Conduct believes that the interests of the judiciary and the public would be best served by issuing this public statement clarifying the scope of Canons 2B and 5(3) of the Texas Code of Judicial Conduct as they relate to political endorsements by members of the judiciary.

The Commission wishes to communicate to all members of the Texas judiciary its view that political endorsements by judges reflect adversely on the integrity and impartiality of the judiciary and, therefore, are expressly prohibited by the following standards of judicial conduct:

1. Canon 2B of the Texas Code of Judicial Conduct, which states in pertinent part: "A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others...."
2. Canon 5(3) of the Texas Code of Judicial Conduct, which states in pertinent part: "A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office..."

In the past, it has been argued that a judge does not violate Canon 2B if he or she simply avoids using the term "Judge" or "Justice" in a public endorsement of a candidate for public office. The Commission concludes that it is virtually impossible for a judge, at least in the eyes of the public, to separate himself or herself from the judicial office; therefore, it is immaterial to the issue of misconduct that a judge does not use his judicial title or refer to his judicial position in a public endorsement of a candidate for public office.

It has also been argued that a judge avoids violating Canon 5(3) by personally publishing an endorsement of another candidate for public office as opposed to giving permission to or "authorizing" the candidate or a third party to use the judge's name in such a public endorsement. The Commission declines to accept this narrow interpretation of the term "authorize." The Commission makes no distinction between acting on one's own behalf and empowering another to act on one's behalf as the Canon necessarily encompasses the broadest definition of the term "authorize."

The Commission issues this public statement pursuant to the authority granted to it by Article V, Section 1-a(10) of the Texas Constitution.

This public statement is intended to help preserve the integrity of all judges in the State of Texas, to promote public confidence in the judiciary, and to encourage judges to maintain high standards of professional conduct.

Signed this 24th day of March, 2000.

Handwritten signature of William G. Arnot in black ink.

Honorable William G. Arnot, Chairman
State Commission on Judicial Conduct

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.**

CLERKS continued from Page 11

may be downloaded from TMCEC web site, www.tmcec.com.

Study Sessions for Levels I and II

TMCEC offers four-hour study sessions for Levels I and II the afternoon prior to each TMCEC 12-hour seminar.

TCCA and TMCA offer study sessions for Levels I and II at their respective Annual Convention or Meeting. TCCA local chapters also offer study sessions of varying lengths. All approved study sessions count toward the Certification Program's educational requirements. Contact TCCA or TMCA for more information.

Test Dates for All Levels

Tests are offered at the close of each TMCEC 12-hour Clerk Program and the 12-hour Court Administrator Program. TCCA and TMCA offer testing in conjunction with their annual meetings each year. The cost of the test is \$50.

Certification Process

To attain certification at each level, a

clerk must complete an application that may be obtained from TMCEC (800/252-3718) and submit proof that all requirements are met. The clerk will then receive a certificate of accomplishment for that level. After a clerk has completed all of the requirements for each of the three levels, the clerk will be designated as a *Certified Municipal Court Clerk* and entitled to put the designation CMCC behind his or her name.

QUESTIONS or CONCERNS?

Please express them to TCCA President *Rosie Caballero* (972/304-3651), TCCA Education Committee Chairperson *Leisa Hardin* (817/297-6178 ext. 103), or any TCCA Board Member, TMCA/TMCEC Board Member, or *Hope Lochridge* and *Margaret Robbins* at TMCEC (800/252-3718). All three levels of the program are now complete.

TMCA ANNUAL MEETING

The Texas Municipal Courts Association (TMCA) is planning its Annual Meeting

in Austin on June 16-17, 2000 at the Hyatt Regency Hotel, located on Town Lake.

The program will include sessions on magistrate's consular warnings, procedures related to DSC and deferred, and a legislative preview. An evening barbecue is planned at the Salt Lick, located in the Texas Hill Country. A computer literacy class will be offered on Saturday, as well as study sessions for Levels I and II (Friday) and examinations for all three levels (Saturday) for the Texas Court Clerks Certification Program. To register, send \$75 to TMCA c/o Robert C. Richter, 1350 NASA Road One, Suite 200, Houston, Texas 77058 (281/333-9229).

To make your hotel reservation, contact the Hyatt directly (512/477-1234, 208 Barton Springs Road, Austin, Texas 78704). The housing deadline is May 25, 2000, and there is only a limited number of sleeping rooms reserved at the state rate. Questions about the program can be answered at the Center (800/252-3718).

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

Bulk Rate
U.S. Postage
Paid
Taylor, TX
Permit No. 8

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.