

# *R* Municipal Court Recorder

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## Graduated Driver's License

by Sharon Hatten, TMCA Vice President,  
Municipal Court Judge, Midland

S.B. 577, or the "Graduated Driver's License Law," creates a progressive system that restricts a teenage driver's driving activities during certain intervals of the day. It is believed that easing teens into the driving experience will minimize their exposure to high-risk situations – thus reducing fatalities and crashes involving novice drivers.<sup>1</sup> The law is aimed at new drivers under 18 but will not affect them all. Teenage drivers accompanied by a licensed driver over 21 when riding in the front seat and drivers with temporary or hardship licenses are exempt. Also, any individual who started the licensing process prior to Jan. 1 will be grandfathered out of the new law.

Effective January 1, 2002 and pursuant to Section 521.204 of the Transportation Code, the Department of Public Safety is prohibited from issuing a Class A, B, or C driver's license (excluding hardship and temporary licenses) to an applicant under 18 until the driver has held an instruction permit or hardship license for at least six months. The law also amends Section 521.222(d) to increase from 18 to 21 the age of the person accompanying the instruction permit holder while riding in the front seat.

The most dramatic changes, however, place time and passenger restrictions on the teenage driver. The new Section 545.424 prohibits

the novice driver during the first six months after having been issued an original license from driving between midnight and 5:00 a.m. There are the usual exceptions such as work, school, or medical emergency but driving home after the midnight movie is not one. It also limits to one person the number of passengers in the car under 21 who are not family members. So, carpooling to and from school, lunch, or practice with a couple of friends is out of the question anytime of the day or night for the first six months. According to the DPS, the restriction language will state: "TRC 545.424 applies until MMDDYY" under the restriction

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## Hate Crimes: Prosecute in Municipal Court?

By Pamela Harrell Liston  
City of Dallas Municipal Prosecutor

As an attorney who represents local governments, I enjoy the distinct privilege of being a prosecutor at the municipal court level. Municipal courts are fascinating entities because of their jurisdictional authority over offenses that occur within the territorial limits of the municipality that are punishable by fine only.<sup>1</sup> Within the context of Texas criminal

cases, Class C misdemeanors are the only cases that do not carry with them the possibility of incarceration as a punishment.<sup>2</sup> Therefore, if an offense is punishable by incarceration, it cannot be prosecuted in the municipal court.

Recently, I was faced with a case that appeared to have a racial motivation.

*Hate Crimes continued on page 16*

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**AROUND THE STATE**

**TMCA Annual Meeting**

The Texas Municipal Courts Association will hold its 2001-2002 Annual Meeting on April 13, 2002 in Austin from 10 a.m. – 12:00 noon at the Austin Hilton Airport Hotel (9515 New Airport Drive, Austin 78719 - 512/385-6767). This Annual Meeting will be held in conjunction with the TMCEC/TMCA Quarterly Board Meeting. Members will be responsible for their own housing, meals, and transportation arrangements. At this time, the agenda will consist of the President's Report to the membership, the annual fiscal report, and a discussion of possible legislation for the 78<sup>th</sup> Session. TMCA members with questions or items to be added to the agenda should contact the TMCA President, The Honorable Robert Kubena, Municipal Court Judge, City of Hallettsville, 509 South Front, Hallettsville, TX 77964 (h: 361/798-2109 c: 361/798-3271 fax: 361/798-3340). Members planning to attend are asked to RSVP to TMCEC in Austin (800/252-3718) so enough seating and handouts are arranged. Hotel reservations should be made directly with the hotel (512/385-6767 – refer to the TMCA block). There are a limited number of sleeping rooms available for Friday night at the state rate of \$80.

Non-profit corporations are required to hold an annual meeting each fiscal year. TMCA's fiscal year is September 1, 2001 – August 31, 2002. Typically, TMCA also offers educational programs alongside its Annual Meeting. The 01-02 Annual Meeting will be different as it will be strictly a business meeting, as the TMCA is in the process of moving its Annual Meeting and Convention to the fall. Next year TMCA plans to host its 02-03 Annual Meeting with the typical convention and educational activities October 24-27, 2002 in the Corpus Christi or Clear Lake (Houston) area. The annual judicial awards of distinguished judge and clerk will be announced in October.

**Looking Forward**

The following annual events have already been tentatively scheduled for next fall:

TMCEC 32-hour New Clerks: September 23-27, 2002 – Austin

Texas Court Clerks Association Conference: October 5-9, 2002 – Midland

TMCEC 12-hour Clerks: October 14-15, 2002 – Tyler

Texas Municipal League: October 16-19, 2002 – Fort Worth

TMCEC 12-hour Judges: October 16-17, 2002 – Tyler

TMCEC 12-hour Judges/Clerks: October 30 - November 1 – Austin

TMCA Annual Meeting & Convention: October 24-27, 2002 – tentatively planned for the Corpus Christi or Clear Lake (Houston) area

Texas Teen Court Conference: November 5-8, 2002 – College Station



# FROM THE GENERAL COUNSEL

## W. Clay Abbott

### A Matter of Semantics

Please read Margaret Robbins' excellent article concerning court costs on page in this newsletter. As she clearly explains, municipalities cannot, except in legislatively created exceptions, create local costs or fees. Too often courts properly apply their discretion in setting fines based on relevant criteria but use the wrong language in doing so, thereby drawing the attention of auditors and the State of Texas. Courts that charge greater fines—within the statutory fine range—based on factual criteria are properly exercising judicial discretion. For example, the court may add higher penalties based on number of months of expiration, number of miles over the limit, or other relevant fact issues. The problem arises when the court improperly identifies these raised fine amounts as fees or costs. This improper use of language miscommunicates the proper exercise of discretion as a locally imposed fee or cost prohibited by law. When it comes to audits and public perception, this simple matter of improper semantics can become a much bigger and unnecessary problem.

### In-Court Judicial Misconduct

Judges' activities outside of the courtroom are frequently the basis of Judicial Conduct Commission warnings and other sanctions as we saw in the last edition of this newsletter. On December 17, 2001, the State Commission on Judicial Conduct issued a Public Warning to Honorable Raymond Angelini, a District Judge from San Antonio, concerning

his conduct during a hotly contested proceeding in the courtroom. His conduct can be summarized in two categories: nonverbal facial expressions and body movements indicating the judge's disapproval of the defense case and, secondly, a verbal altercation with defense counsel where the judge "lost his temper and screamed." Most of the evidence was gathered at a Defendant's Motion for New Trial hearing before a visiting judge. The motion was granted based on the judge's conduct.

The case involved a veteran police officer accused of aggravated sexual assault of a child. The trial was high profile and strenuously tried by both sides. The altercation took place outside of the jury's presence. It was in response to the defense asking the judge to hold the prosecutor in contempt. These were obviously heated circumstances. The altercation did take place on camera, in that the court allowed media recording, and the footage was displayed to the public by the media. The defendant was convicted and given probation. The judge is running for reelection.

The Commission concluded that the judge violated Canons 3B(3), 3B(4) of the Texas Code of Judicial Conduct and thereby Canon 3B(5). Canon 3B(3) requires the trial judge to "... require order and decorum in proceedings before the judge." Canon 3B(4) requires the trial court "... be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals..." Because the court failed in these regards the Commission concluded that the trial judge displayed a bias or prejudice against the defen-

dant in violation of Canon 3B(5).

So much information is conveyed without words. Judges must control not only their words, but also all their means of communication. Large parts of the warning are given to describing the head shakes, yawns, and other nonverbal signals of the court's displeasure. All trial judges could use a reminder to readjust their "poker faces" from time to time.

Judges, like all human beings, can be caught up in the emotional swirl of human endeavor. Attorneys from both sides orchestrate a well-tryed criminal case as an emotional whirlwind. The trial judge must remain above the fray and is responsible for maintaining decorum. The role of a neutral and detached referee is not for everyone, but neither is the position of judge and the responsibility that goes with it. Confidence in our system of justice requires that the court rule on issues of law without opining on issues of fact, even nonverbally. In this case, the Commission issued a warning that the trial judge must not allow the trial to take on what witnesses and the Commission called a "carnival atmosphere." More importantly, the Commission found that the judge contributed to that atmosphere.

### Victim Impact Panels

If you have already heard my sermon about victim impact panels at one of our recent schools, you can disregard this section.

Municipal courts are on the frontline of deterring and controlling criminal conduct. The eventual drunk driver who takes the life of a child likely started his/her criminal justice career

with an MIP or similar alcohol-related Class C offense. The domestic violence cycle is often first played in municipal or justice court. Petty offenders slip through our “minor leagues” on their way to felony notoriety. As my friends and detractors love to tell me, I am not very disposed to rehabilitation and education in the criminal justice system. As a long-time prosecutor, I am more into punishment and deterrence. Victim impact panels are my exception.

At the recent Advanced Prosecutor School in Houston, I and a couple dozen city prosecutors observed a victim impact panel. We heard the stories of three persons whose lives had been directly impacted by DWI, Domestic Violence, and Sexual Assault. They were not perfect, nor did they provide answers to many difficult issues in the prosecution of such cases. But their stories were real and compelling. Each took a microphone and told our group how the crimes had affected them. They put a human face on the “bigger” problems we face each day in the system. They gave firsthand descriptions of doubt, self-blaming, anger, helplessness, and disconnection from even those who tried to help in the processing of their cases. It was impossible not to be moved.

My experiences mirrored those I had in the past. I have seen tough, old, surly four- and five-time DWI losers cry and vow to change. I have seen tough, stone-faced “gang-bangers” deeply affected. The advantage is not all to the offender. Several victims have relayed to me that the panels helped give them closure and a sense of empowerment that they had been denied by the crimes against them. If any part of continued criminal conduct is due to ignorance of its impact, that cause evaporates during these panels.

These impact panels are open to

offenders of all levels and members of the public. The difficult work of setting up a program has probably already been done in your community. Most panels are created for offenders who must complete the program as part of a misdemeanor or felony probation. That means a reporting system has already been set up. To find a local program, contact the Victim/Witness Coordinator at your local district or county attorney’s office or contact Sheri Sikes, State Coordinator—Victim Impact Panel Program, Texas Department of Criminal Justice, Victim Services Division at 800/848-4284.

I would recommend this program to anyone in the criminal justice field; you will be surprised. It is also a great way to use some of those required juvenile community service hours. It is a natural term in domestic violence and alcohol case deferred dispositions. Best of all, it is easy and cheap. Sometimes it seems we have so much to accomplish and so few tools to do it with. Don’t overlook this meaningful, easy, and available program.

Graduated continued from page 1

code on the back of the driver’s license when applicable.

Some may say the new law in effect creates a curfew in that teens can’t drive after midnight. However, it appears as long as a much older brother or sister, or boyfriend/girlfriend for that matter, rides along in the front seat, the 16-year-old driver can tote around all their buddies whenever and wherever they wish. Section 545.424 specifically allows this so long as the other passenger in the front seat is 21 or older and is a seasoned driver (licensed one or more years). And, unlike most city curfew ordinances, Section 545.424 specifically prohibits a police officer from stopping a vehicle for the sole purpose of determining whether the driver is in

violation of these restrictions.

Also, the time and passenger restrictions do not apply to drivers with a hardship license, temporary license, or licensed drivers 18 or older. However, first time drivers who apply for a license at the age of 18 and who receive an instruction permit as opposed to an original Class A, B, or C license would be required to have a licensed driver in the front seat 21 or older according to Section 521.222(c)(d).

For motorcycle drivers, the law is applied a little differently. If under 17 and the holder of a restricted motorcycle license, the driver cannot drive between midnight and 5:00 a.m. unless in the presence of a parent. The usual exceptions apply: to work, school, or medical emergency situations for the first six months following the issuance of an original motorcycle license.

Not contained in the new laws is the necessary language making it a criminal offense or setting a penalty. Therefore, one must look to the general provision clause in Section 521.451 which makes it an offense and sets a fine of \$1 to \$200 for Section 521.204. The penalty provision for violating Section 545.424 falls under the general penalty provisions of Subtitle C, Rules of the Road, and carries a fine from \$1 to \$200 as well (Section 542.401).

<sup>1</sup> Currently, motor vehicle crashes are the number one killer of Texas teenagers. In 1998, more than 320 Texas teens, ages 15 through 18, died in motor vehicle crashes and another 40,324 were injured. More than 40 percent of teens’ fatal crashes occur between 9 p.m. and 6 a.m. Single vehicle collisions represent nearly half of fatal crashes involving 16 and 17-year-old drivers. Those crashes can be linked to driver error, speed, peer passenger distraction, and lack of experience. The crash involvement rate for teens is more than double that for all other Texas drivers. *Insurance Institute for Highway Safety, Highway Loss Data Institute.* Last updated 10/01.



## LEGAL UPDATE

# Enhancements in Municipal Courts

### Suggestions for Prosecutors and Judges

By Ross Fischer  
Kendall County Attorney &  
Bulverde Municipal Prosecutor

Texas law allows a variety of Class C offenses to be “enhanced” to higher levels when dealing with repeat offenders. Enhancement allows courts to tailor the punishment to the specific defendant. Primarily, prosecutors are responsible for taking the proper steps to enhance an offense. Though some practical hurdles exist, following some simple guidelines can make enhancements easier for municipal prosecutors as well as for county and district attorneys who inherit the defendants in future cases.

#### Why Enhance?

Enhancing misdemeanor offenses can serve several practical purposes. It can give prosecutors greater leverage when trying a new offense. Additionally, it provides the court with the information needed to ensure proportionality in punishment. Further, it can have a deterrent effect by sending a message that repeat offenders will be treated more severely.

Texas courts have upheld the legality of enhancements. Case law makes clear that enhancements are constitutional [*Rummel v. Estelle*, 445 U.S. 263 (1980)] and do not violate the Sixth Amendment [*Matula v. State*, 390 S.W.2d 263 (Tex. Crim. App. 1965)] or Double Jeopardy [*Brown v.*

*State*, 196 S.W.2d 819 (Tex. Crim. App. 1946)]. Similarly, Texas courts have ruled that enhancements are not cruel and unusual punishment.

#### What Offenses Can Be Enhanced?

When dealing with enhancements, municipal courts will most likely see cases involving alcohol offenses relating to minors, lack of auto insurance, disorderly conduct, public intoxication, and theft. Municipal prosecutors and court administrators need to be aware of these offenses so that they can enter and maintain proper judgments, and be able to locate the convictions when other prosecutors need them. Other misdemeanors that can be enhanced include assault, hate crimes, cable theft, and deceptive business offenses.

#### Alcohol Offenses by Minors

Of particular interest to municipal courts should be the enhancement of alcohol-related offenses committed by minors. Although the penalties are enhanced for each subsequent offense, a second offense remains a Class C misdemeanor and within the jurisdiction of the municipal court. Only on a third offense does the case get filed in county court. The tiered punishment schedule in Texas Alcoholic Beverage Code Section 106.071 details the fine amount, the length of drivers license suspension, and the amount of community service required for repeat offenders. This section applies to those convicted of minor in possession of alcohol, minor in consumption of alcohol, purchase by a minor, and misrepresentation of age. Convictions include findings of delinquent conduct by a juvenile court and deferred dispositions,

106.071(f)(1)(2), A.B.C.

#### Driving Under the Influence of Alcohol

For cases where a minor is driving under the influence of alcohol, the first two offenses are both Class C misdemeanors, and subsequent violations are bumped to county court. When enhancing D.U.I. offenses, the law allows both orders of deferred disposition and findings of delinquent conduct by a juvenile court to count as “prior convictions.” Alcoholic Beverage Code, Section 106.041.

#### Driving without Liability Insurance

Municipal prosecutors are likely to encounter defendants charged with the operation of a motor vehicle without the required proof of financial responsibility (Section 601.191, T.C.). First-time offenders face a fine of not less than \$175 or more than \$350 (although the court may lower the fine if the accused is economically unable to pay). Those offenders who continue to drive without the proper insurance face enhanced fines of not less than \$350 and not more than \$1,000.

#### Habitual Offenders

Penal Code Section 12.43 allows defendants who have been convicted of either public intoxication (Section 49.02, P.C.) or disorderly conduct (Section 42.01, P.C.) three times within the previous 24 months to be enhanced. Any combination of these two crimes will suffice for enhancement purposes. For example, an individual who has been twice convicted of disorderly conduct and once

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of public intoxication within the last two years is eligible for enhancement.

### Theft

Class C theft offenses (those with a value of less than \$50 or theft by check under \$20) can also be enhanced. A second offense can be tried as a Class B misdemeanor, and a third offense can be bumped up to a state jail felony (Section 31.03(e), P.C.).

### Family Violence Assault

If a conviction for a simple assault (Section. 22.01(a)(2) or (3), P.C.) includes an affirmative finding of family violence, subsequent domestic assaults where bodily injury is sustained can be enhanced to a third degree felony. This is important for the reason that the severity of household violence often escalates with each incident. If a conviction in municipal court includes a finding of family violence, a later, more serious incident (normally a Class A misdemeanor) can be immediately increased to a felony, giving the district attorney jurisdiction over the case.

### Crimes Motivated by Bias/Prejudice

A new enhancement tool available to municipal courts involves the use of affirmative findings of bias or prejudice in certain Class C offenses. Article 42.014 of the Code of Criminal Procedure requires a judge, in certain proceedings, to make an affirmative finding that the defendant was motivated by bias towards a protected group. Municipal courts may seek such a finding in cases of assault (Section 22.01, P.C.) and criminal mischief where the amount of pecuniary loss is less than \$50 (Section 28.03(b)(1), P.C.). In such cases, punishment for a subsequent offense is increased to the punishment prescribed for the next highest category of offense (Section 12.47(a), P.C.).

### Other Offenses

Other offenses that can be enhanced, and may be encountered by municipal courts, include cable theft (Section 31.12, P.C.), and deceptive business practices (Section 32.42, P.C.). It is also worth noting that convictions for driving, flying, boating, or operating an amusement ride while intoxicated may be enhanced (Section. 49.09, P.C.), although these are rarely, if ever, encountered by municipal courts.

### Finding Priors

Often there is no statute of limitations for enhancing Class C misdemeanors to higher-grade offenses. Remember, however, for disorderly conduct and public intoxication, the three priors must have occurred within the previous 24 months.

Sometimes the most difficult aspect of enhancing an offense is knowing that prior convictions exist. Being able to locate past judgments is important, both to municipal prosecutors and county prosecutors. If an offense is a second offense that remains a Class C, then the municipal prosecutor will need to know of the first offense so that the new violation can be handled appropriately. If the new offense is a third charge, the county prosecutor will need to have proof of the priors in order to have proper jurisdiction. Also, if a municipal prosecutor is allowed to try the case in county court, he or she will need to be able to prove up the previous convictions.

Probably the most effective method of locating prior convictions is through the TCIC/NCIC systems. It is also helpful to check the records of your local police department and jail, search your own database or files, and ask other local courts to check their records.

When a prosecutor locates a prior conviction, he or she should make

sure to have the cause number, the county, the court, the conviction date, and the nature of the offense. The prosecutor should then notify both the court and the defendant of intent to enhance the current charge. It is also important to include the specific prior convictions in the new charging instrument.

If a county or district attorney is using a municipal conviction as a means to enhance a subsequent offense, that prosecutor will need to prove up the prior as an element of the new offense. Therefore, a final judgment from municipal court that clearly states a conviction will be a necessary part of that later case.

### Enhancing a New Offense.

When enhancing a new offense, be sure to do the following:

- *Get a certified copy of the prior judgment.* In order to be successfully used for enhancement, a prior conviction must have been entered before the date of the new offense [*Mullins v. State*, 144 S.W.2d 565 (Tex. Crim. App. 1940)] and must be a final conviction (*Arbuckle v. State*, 105 S.W.2d 219 [Tex. Crim. App. 1937]).
- *Make sure to allege the previous conviction in the charging instrument* [*Palmer v. State*, 229 S.W.2d 174 (Tex. Crim. App. 1950)]. Be sure to include the cause number, the court and county, the conviction date, and the nature of the offense [*Morman v. State*, 75 S.W.2d 886 (Tex. Crim. App. 1934)].
- *Give notice to the court and the defendant of the enhancement.* File a Notice of Intent to Seek Enhancement with the court, and serve a copy on the defendant. Keep in mind the requirements set out in the Rules of Evidence [Rules 404(b) and 609(f)] and

Article 37.07 of the Code of Criminal Procedure.

- *Be prepared to prove up the prior conviction and be able to identify the defendant.* If the defendant will not stipulate to the priors, be ready to prove the defendant's identity via fingerprints [*Rhodes v. State*, 299 S.W.2d 153 (Tex. Crim. App. 1957)] or testimony from a person involved in the old proceedings. [*Stevens v. State*, 245 S.W.2d 499 (Tex. Crim. App. 1957)].
- *Once convicted, be sure to have a good judgment.* A good judgment should include the date of conviction, the county or municipality, the court, the cause number, the offense, the sentence, a finality of conviction, and the defendant's identifiers (preferably fingerprints, but a social security number or state identification number will do). Having a good judgment will make it easier to enhance in the future, in case the defendant still does not get the message.

## AG Opinions On-Line

If you would like to receive notification of future Texas Attorney General's (AG) opinions, go to the AG's website and follow the instructions. The link is shown below:

[http://  
www.oag.state.tx.us/  
opinopen/  
subscribe\\_to\\_opinions  
.htm](http://www.oag.state.tx.us/opinopen/subscribe_to_opinions.htm)



Following these suggestions will help municipal prosecutors and judges enhance offenses to be tried in municipal or county court, and will make it easier for county and district attorneys to ensure that recidivists get the treatment that they deserve.

## The Bottom Line on Juvenile Contempt

By Ryan Kellus Turner  
Program Attorney &  
Deputy Counsel, TMCEC

Attention municipal and justice court judges:

1. No, you may not *confine* a juvenile for contempt.
2. If you do so despite the law, you may be able to avoid civil liability in state court, but do not expect immunity from federal claims brought under 42 U.S.C. Section 1983.
3. Unless you opt to retain the contemnor and utilize what options are given to you under Article 45.050 of the Code of Criminal Procedure, contemptuous conduct before your court is *delinquent conduct* and must be referred to a juvenile court for adjudication.
4. Neither "status offenders" nor "nonoffenders" may be detained in "nonsecure detention facilities."

So says the Office of the Attorney General of Texas in JC-0454, issued January 28, 2002.

While shedding no new light on the ambiguous areas of juvenile law that

local trial courts encounter on an increasing basis, JC-0454 effectively puts both municipal judges and justices of the peace on notice as to the potential consequences of improperly applying the law of contempt to juveniles in Texas.

Stemming from an opinion request by John F. Healey Jr., Fort Bend County District Attorney, the facts underlying JC-0454 are as follows. Despite the district attorney's objections based on provisions in the Family Code, at least one of the justice courts within his jurisdiction regularly sent juveniles to the county detention facility with orders finding the juvenile in contempt of court and assessing a term of confinement of three days in the juvenile detention facility.

In underscoring the above stated conclusions of JC-0454, the following observations are warranted:

1. Despite the fact that this opinion was requested at the awkward juncture following the 77<sup>th</sup> Legislature but prior to the enactment of new laws pertaining to contempt in municipal and justice court, nothing in the former or current law authorizes municipal or justice courts to confine juveniles for contempt. While this may seem a tad simplistic, bear in mind that Section 54.023(2)(B), F.C., now allows municipal and justice courts to retain the juvenile contemnor and "order the child to be held in a place of nonsecure custody designated under Section 52.027 for a single period not to exceed six hours." Though hopefully no judge will read too much into Section 54.023, perhaps its language could be misconstrued as to allow some form of limited confinement. Criticisms abound what some consider the oxymoronic notion of

“nonsecure custody.” Notably, however, the Attorney General points out that Section 52.027, F.C. was repealed by Senate Bill 1432. Furthermore, Article 45.050, C.C.P., provides a more specific rule for both courts that does not contain a provision authorizing the use of nonsecure custody as a sanction of juvenile contempt. Bottom line: There is reason to question the viability of using Section 54.023(2)(B).

2. While Texas’ adoption of the English common law doctrine of sovereign immunity protects judges accused of false imprisonment, Title 42 U.S.C. Section 1983 creates a cause of action against any person who, under color of state law, causes another to be deprived of a federally protected constitutional right. Keep in mind, Section 1983 was enacted specifically to prevent the “misuse of power, possessed by virtue of state law and made possible only because the [official] is clothed with the authority of state law.” [*Johnson v. Lucas*, 786 F.2d 1254, 1257 (5<sup>th</sup> Cir. 1986)]. Bottom line: Do not take your “clothes” for granted.
3. It is unnecessarily easy to get tangled up in the lexicon of the Family Code’s Juvenile Justice Act. While the Code uses various terms to link certain juveniles with certain forms of conduct (e.g., “status offender” and “nonoffender”), in the context of contempt, municipal and justice courts need only remember one definite label. Conduct that violates a lawful order of a municipal or justice court under circumstances that would constitute contempt of that court is *delinquent conduct*. Section 51.03(a)(2), F.C. Bottom line: Such juveniles are neither status offenders nor nonoffenders.

Rather, they are “delinquents.”

4. While both the Code of Criminal Procedure and the Family Code contain references to “places of nonsecure custody” and “juvenile curfew processing offices,” neither of these places should be confused with a “juvenile detention facility.” A child taken into custody for an offense within the jurisdiction of a municipal or justice court, other than public intoxication, *cannot* be taken to a juvenile detention facility. There are, however, two exceptions. First, a child may be taken to juvenile detention if the municipal or justice court *transfers* the juvenile’s case (excluding traffic cases) to juvenile court. Section 51.08(b), F.C., Second, a child may be taken to juvenile detention if the child is *referred* to the juvenile court for contempt of a municipal or justice court order. Article 45.058, C.C.P. (formerly Section 52.027(f)(2), F.C.). Bottom line: Municipal and justice courts do not have the authority to assess a term of confinement in a juvenile detention facility. Rather, the court’s authority is limited to having the juvenile taken to a detention facility as part of a referral to juvenile court for contempt of a municipal or justice court order.

## Local Court Costs

by Margaret Robbins  
Program Director, TMCEC

Can cities provide for the imposition and collection of court costs by ordinance? This question is answered by Article 45.203(d) of the Code of Criminal Procedure, which provides that “[C]osts may not be imposed or collected in criminal cases in municipi-

## Who Can Request an Attorney General Opinion?

Sections 402.042 and 402.043 of the Government Code set out the state and local officials who are authorized to request formal Attorney General opinions on questions of law. The Attorney General is prohibited by statute from giving a written opinion to anyone other than an authorized requestor. Authorized requestors include:

- the Governor;
- the head of a department of state government;
- the head or board of a penal institution;
- the head or board of an eleemosynary institution;
- the head of a state board;
- a regent or trustee of a state educational institution;
- a committee of a house of the Texas Legislature;
- a county auditor authorized by law; and
- the chairperson of the governing board of a river authority.

The Attorney General shall also advise a district or county attorney in certain instances in which the State is interested and certain requirements are met.

pal court by ordinance.” It is important for courts to understand that city councils do not have authority, absent statutory authority, to adopt fees or court costs. Likewise, judges do not have authority to impose a cost or fee without any legal basis.

Funds that are collected without authority are considered by the state to be unjust enrichment. If the state determines that costs or fees are collected without authority, the court would be required to return the money to the defendants or, if the court is unable to locate the defendant, to turn the money over to the state.

The Legislature, however, has provided limited authority in three instances for cities to create and adopt fees by ordinance. Subsection (c) of Article 45.203 permits cities to create a fee by ordinance not to exceed \$25 for the issuance and service of warrants for the offenses of *failure to appear* and *violation of promise to appear*. This statute requires due notice of the fee before collection. The money collected for the warrant service is to be paid into the municipal treasury for the use and benefit of the city. The other statutes that provide authority for cities to adopt ordinances creating fees are Article 102.017, C.C.P., for the imposition and collection of a building security fee and Article 102.0172, C.C.P., for the imposition and collection of a technology fee. Both of these fees are dedicated funds for the specific purpose that they were intended for. Hence, cities may not commingle these funds with general revenue funds and must allocate them in their budget for court security and for court technological enhancements. Both statutes provide a list of items for which the city can use the funds. If the city has money left over in these two funds at the end of the city's fiscal year, the money must remain in the specific funds and may not be used for general revenue purposes because they are dedicated funds.

Although there are only three fees that a city can adopt by ordinance, statutes require the collection of certain court costs for use by the city. Some of these fees are dedicated money for certain purposes; others are not.

Statutes also provide for some optional discretionary fees that may be imposed by the judge. The following information is provided to help courts in determining the local costs that may be retained by the city. For assessing and collection questions about all court costs and fees, the court should contact the Local Government Assistance Division of the State Comptroller's Office. Their toll free number is 800/531-5441, extension 34679 (or direct at 512/463-4679). For questions on reporting, contact the Revenue Accounting Division toll free at 800/531-5441, extension 3476 (or direct at 512/463-4276).

### **Required State Fees Retained Locally**

Required state fees that are retained locally include Child Safety Fund (Article 102.014, C.C.P.); Traffic Fund (Section 542.403, T.C.); fees for services of peace officers (Article 102.011, C.C.P.); Jury Fee (Article 102.004, C.C.P.); Time Payment Fee (Section 51.921, G.C.); and required administrative fee for dismissing an expired inspection certificate (Section 548.605, T.C.).

### **Child Safety Fund**

The Child Safety Fund is collected on the following convictions:

- parking offenses;
- Transportation Code Subtitle C offenses that occur in a school-crossing zone (with a few exceptions); and
- Education Code offenses *failure to attend school* and *parent contributing to truancy*.

The Child Safety Fund statute, Article 102.014, C.C.P., divides cities into two different population categories—greater than 850,000 and less than 850,000 and provides different rules for each category. If a city with a population greater than 850,000 has

adopted an ordinance, regulation, or order regulating the stopping, standing, or parking of vehicles, the governing body must by order assess court costs on each parking violation of not less than two dollars and not more than five dollars. If the city has a population less than 850,000 and has the prerequisite ordinances to regulate stopping, standing, and parking, the governing body may by order assess court costs on each parking violation not to exceed five dollars.

The amount collected upon conviction for Subtitle C offenses that occur in a school-crossing zone is \$25 per conviction. The amount collected for the offenses of *failure to attend school* and *parent contributing to truancy* is \$20 per conviction.

The Fund is a dedicated fund for the purpose of providing school crossing guard services. In cities that have a population of more than 850,000, the city may contract with one or more school districts to provide school crossing guards. After contracting with a school district, the city may deduct up to 10 percent of the funds for administrative costs of contracting for the services and distributing the funds to the school district. (Section 343.013, L.G.C.) The governing body of the city is required to determine the number of school crossing guards needed by the city, which would include public, parochial, or private elementary or secondary schools. In addition, the city would have to provide the necessary equipment for the school crossing guards. (Section 343.014, L.G.C.) After payment of the expenses to the school crossing guard services, any remaining money in the fund may be used for programs designed to enhance child safety, health, or nutrition, including child abuse intervention and prevention and drug and alcohol abuse prevention. (Section 106.003, L.G.C.) If a

city has a population of less than 850,000, the money must be used for school crossing guard services if the city operates such a program. If it does not operate a school crossing guard program or the money collected exceeds the expense of operating a program, the city may either deposit the additional money in an interest-bearing account or expend it for the same type of child health and safety programs as a city with a population over 850,000.

### Traffic Fund

The Traffic Fund, which is three dollars, is required to be collected upon conviction for Subtitle C, Transportation Code offenses. The statute, Section 542.403, T.C., does not require this money to be used for a certain purpose. Therefore, the money can be deposited into the general fund and used for any lawful purpose.

### Fees for Services of a Peace Officer

Article 102.011, C.C.P., lists several fees that the court is required to collect upon conviction of any fine-only offense when a peace officer performs the service. The statute creates the following fees:

- \$5 arrest fee for issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, or penal law of this state, or for making an arrest without a warrant;
- \$50 warrant fee for processing or executing a warrant of arrest or *capias*;
- \$5 for summoning a witness (serving a subpoena);
- \$35 for serving a writ (written order) not otherwise listed in Article 102.011 (e.g., summons for defendant or for the parent of a juvenile);

- \$10 for taking and approving a bond and, if necessary, returning the bond to the courthouse;
- \$5 for summoning a jury;
- \$8 for each day's attendance of a prisoner in a habeas corpus case if the prisoner has been remanded to custody or held to bail (Note: Only municipal courts of record judges on the municipal level have the authority to issue a habeas corpus. See Chapter 30 of the Government Code.); and
- the costs of overtime paid to a peace officer for time spent testifying in a trial or for traveling to or from testifying in a trial (amount will vary depending in the officer's salary).

Article 102.011 also provides for 29 cents per mile for mileage if the officer:

- conveys a prisoner after conviction to the county jail;
- conveys a prisoner arrested on a warrant or *capias* issued in another county to the court or jail of the county; and
- provides travel expenses to execute criminal process, to summon or attach a witness, and to execute a process not otherwise described by Article 102.011.

These fees are to be deposited in the city treasury. If a peace officer with statewide authority issues the citation or makes a warrantless arrest, the court must remit one dollar of the \$5 arrest fee to the state; and, if a peace officer with statewide authority processes or serves a warrant of arrest or *capias*, the court must remit \$10 of the \$50 warrant fee to the state. If a local police officer performs these services, the money stays with the city

and can be used for any legal purpose.

### Jury Fee

A \$3 jury fee is collected upon conviction by a jury of a defendant for any fine-only offense. If a defendant fails to withdraw a request for a jury trial not earlier than 24 hours before the time of the trial, the defendant must, if convicted, pay the \$3 jury fee. Since the statute does not specify a certain use for the fee, it can be used for any legal purpose.

### Time Payment Fee

Section 51.921, G.C., requires the clerk of the municipal court to collect a \$25 time payment fee from a person who has been convicted and pays any part of a fine, court costs, or restitution on or after the 31<sup>st</sup> day after the date on which the judgment was entered assessing the fine, court costs, or restitution. This fee is shared with the state and must be reported monthly to the state, unlike most court costs that are reported quarterly. The city keeps 50 percent of the fee and sends 50 percent to the state. Ten percent or \$2.50 must be used for the purpose of improving the efficiency of the administration of justice in the city. The city's other 40 percent (\$10) can be placed in the general revenue fund and used for any legal purpose.

### Administrative Fee for Dismissal of Expired Inspection Certificate

Section 548.605, T.C., requires the court to dismiss and assess a \$10 administrative fee for the charge of driving with an expired inspection certificate if the defendant obtains a valid inspection certificate within 10 working days and the inspection certificate had not been expired for more than 60 days. Since the statute does not specify a certain use of the fee, the fee may be deposited in the

general revenue fund and used for any legal purpose.

**Optional State Fees**

State statutes also provide for some optional discretionary fees that are retained locally and include:

- \$10 administrative fee for dismissal of expired inspection certificate expired more than 60 days (Section 548.605, T.C.);
- \$10 administrative fee for dismissal of an expired

license plate (Section 502.407, T.C.);

- \$10 administrative fee for dismissal of an expired driver’s license (Section 521.026, T.C.);
- \$10 administrative fee when a court grants the defendant the right to take a driving safety course;
- two \$10 fees when a court grants the right to take a teen court program (Note: The judge has the discretion to waive these two fees, but if the judge

requires them, one \$10 fee is disbursed to the teen court program and the other \$10 fee is retained by the city and can be used for any legal purpose.)

These optional \$10 fees are assessed at the discretion of the judge. The judge may choose to not assess these fees. Since the statutes providing for these \$10 fees do not specify how they are to be used, with the exception of the one \$10 fee for the teen court program, the city can allocate them for any legal purpose.

**PURPOSE AND ADMINISTRATION OF STATE COURT COSTS  
Collected by Municipal Court**

<b>FUND</b>	<b>ADMINISTERED BY</b>	<b>PURPOSE</b>
JCPT (Sec. 56.001, G.C.)	Texas Court of Criminal Appeals	Used for continuing legal education of judge and court personnel.
FA – Fugitive Apprehension (Art. 102.019, C.C.P.)	Department of Public Safety	Used to pay costs of apprehending and incarcerating certain individuals.
CVC Crime Victims Compensation (Arts. 56.55 – 56.57, C.C.P.)	Attorney General’s Office	Compensation to claimants or victims; operation of Crime Victim Institute, crime victims compensation administration, and victim-related services and assistance.
CCC - Consolidated Court Costs (Art. 102.075, C.C.P.)	<ol style="list-style-type: none"> <li>1. <b>Abused Children’s Counseling</b> – Texas Legislature.</li> <li>2. <b>Crime Stoppers Assistance</b> – Criminal Justice Division of Governor’s Office.</li> <li>3. <b>Breath Alcohol Testing</b> – Department of Public Safety.</li> <li>4. <b>Bill Blackwood Law Enforcement Management Institute</b> – Bill Blackwood Law Enforcement Institute of Texas.</li> <li>5. <b>Law Enforcement Officers Administrative and Continuing Education Accounts</b> – Texas Commission on Law Enforcement Officer Standards and Education.</li> <li>6. <b>Comprehensive Rehabilitation</b> – Texas Rehabilitation Commission.</li> <li>7. <b>Operator’s and Chauffeur’s License</b> – Department of Public Safety.</li> <li>8. <b>Criminal Justice Planning</b> – Criminal Justice Division of Governor’s Office.</li> <li>9. <b>Fair Defense Account</b> – Task Force on Indigent Defense.</li> </ol>	<ol style="list-style-type: none"> <li>1. Placed in General Fund – appropriated by Texas Legislature.</li> <li>2. Fund crime stoppers organizations; operate toll-free telephone service.</li> <li>3. Used for implementation, administration, and maintenance of statewide certified breath alcohol testing program.</li> <li>4. Used for training for police management personnel.</li> <li>5. Used for Commission administrative expenses and training law enforcement personnel.</li> <li>6. Used for providing rehabilitation services to eligible individuals.</li> <li>7. Used to defray expenses for administering Safety Responsibility law.</li> <li>8. Used for state and local criminal justice projects and for costs of administering funds for the projects.</li> <li>9. Used for implementing Government Code, Chapter 71, Subchapter D (indigent defense).</li> </ol>
JCD – Juvenile Crime and Delinquency (Art. 102.075(m), C.C.P.)	Prairie View A&M University.	Used for the establishment and operation of the Center for the Study and Prevention of Juvenile Crime and Delinquency.
CMI – Correctional Management Institute (Art. 102.075(n), C.C.P.)	Sam Houston State University.	Used for the establishment and operation of the Correctional Management Institute of Texas and Criminal Justice Center account.
Time Payment Fee (Sec. 51.921, G.C.)	Placed in State General Revenue Fund.	Appropriated by Texas State Legislature.
Failure to Appear Fee (Chapter 706, T.C.) (City must have contract with the Department of Public Safety)	In part by Texas Legislature and in part by the Department of Public Safety.	Part used by Texas Legislature (\$10) deposited in General Revenue Fund, subject to appropriation by Legislature Part used by Department of Public Safety (\$10) used to implement the program for denial of renewal of driver’s; licenses for failure to appear or failure to pay or satisfy a judgment.

## CHART OF FUNDS

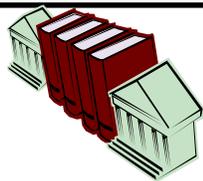
### Reported and Remitted to State

FUNDS	INFORMATION ABOUT EACH FUND				
<b>JCPT</b> Judicial & Court Personnel Training Fund (Sec. 56.001, G.C.)	\$2 on every case including when deferred granted; due quarterly	Not collected on parking and pedestrian offenses			
<b>FA</b> Fugitive Apprehension Fund (Art. 102.019, C.C.P.)	\$5 on every case including when deferred granted; due quarterly	Not collected on parking or pedestrian offenses			
<b>CVC</b> Compensation to Victims of Crime Fund (Arts. 56.55-56.57, C.C.P.)	\$15 on city ordinances punishable by a fine of not more than \$200; includes when deferred granted; due quarterly	\$35 on city ordinances punishable by a fine of more than \$200; includes when deferred granted; due quarterly	\$15 on state law violations punishable by a fine of not more than \$500; includes when deferred granted; due quarterly	\$35 on state law violations punishable by a fine of more than \$500; includes when deferred granted; due quarterly	Not collected on parking and pedestrian offenses
<b>CCC</b> Consolidated Court Costs Fund (Art. 102.075, C.C.P.)	\$17 on city ordinances punishable by a fine of less than \$500; includes when deferred granted; due quarterly	\$40 on city ordinances punishable by a fine of more than \$500; includes when deferred granted; due quarterly	\$17 on all state law violations; includes when deferred granted; due quarterly	Not collected on parking or pedestrian offenses	
<b>JCD</b> Juvenile Crime & Delinquency Fund (Art. 102.075(m), C.C.P.)	\$.50 on every case including when deferred granted; due quarterly	Not collected on parking or pedestrian offenses			
<b>CMI</b> Correctional Management Institute & Criminal Justice Center Fund (Art. 102.075, C.C.P.)	\$.50 on every case including when deferred granted; due quarterly	Not collected on parking or pedestrian offenses			
<b>Time Payment Fund</b> (Sec. 51.921, G.C.)	\$25 due on the 31 <sup>st</sup> day after judgment if any part of a fine, court costs, or restitution paid on the 31 <sup>st</sup> day or after; due monthly	50% (\$12.50) sent to the state; city keeps \$12.50; \$2.50 goes to judicial efficiency fund; \$10 to general revenue			
<b>Traffic Law Failure to Appear</b> (Chapter 706, T.C.)	Must contract with the DPS to deny driver's license renewal. \$30; due quarterly	\$20 sent to the state; \$6 goes to software vendor; city keeps \$4			
<b>Seatbelt &amp; Child Safety Systems Fine</b> (Secs. 545.412 & 545.413, T.C.)	50% of all fines for seatbelt and child safety systems paid to state at end of city fiscal year	50% of fines used in city budget for building and maintaining roads, bridges, and culverts, or for law enforcement purposes			
<b>Operating or Loading Overweight Vehicle Fine</b> (Sec. 621.506, T.C.)	Municipal court has jurisdiction over offenses having a fine that does not exceed \$500.	50% of the fines sent to the state, unless offense occurred within 20 miles from an international border	Fines remitted to state quarterly	City portion used for road maintenance	
<b>Excess Fines Traffic, Title 7, Transportation Code offenses</b> (Sec. 542.402(b), T.C.)	When all traffic fines, including special expenses collected under Art. 45.051, C.C.P., for traffic offenses reach 30% of the city's budget less federal money or bond proceeds, city must send to the state all but one dollar of the fine and special expense.	City must file a report with the State Comptroller when traffic fines and the special expense fees reach 20% of the city's budget.	Only applies to cities under 5000 in population	Fines and special expenses reported in the quarter that in which the 30% is reached	

## CHART OF FUNDS KEPT BY THE CITY

FUNDS	INFORMATION ABOUT FUNDS			
<b>Title 7, Transportation Code Fines</b> (Sec. 542.402(a), T.C.)	All fines collected for Title 7 traffic offenses must be used by the city to build and maintain roads, bridges and culverts, or for law enforcement purposes			
<b>TFC</b> Traffic Fund (Sec. 542.403, T.C.)	\$3 only on Subtitle C, Transportation Code offenses	Can be used for any legal purpose.	Collected on parking and pedestrian offenses.	
<b>CS</b> Child Safety Fund (Art. 102.014, C.C.P.)	Up to \$5 if city has adopted appropriate ordinance, or order regulating the stopping, standing, or parking of vehicles as allowed by Sec. 542.202, T.C.	\$25 for any Subtitle C, Transportation Code offense that occurs in a school crossing zone.  \$25 for passing a stopped school bus loading or unloading children.	\$20 on conviction of "parent contributing to truancy," or "failure to attend school".	City may receive from the county under Sec. 502.173, T.C., money for the child safety fund.  Used to fund a school crossing guard program or if the city does not have one, it may deposit the funds in an interest bearing account or used for programs designed to enhance child safety, health, or nutrition, including child abuse prevention and intervention and drug and alcohol abuse prevention.
<b>AF</b> Arrest Fee (Art. 102.011(a), C.C.P.)	\$5 for service of a peace officer issuing a citation or for making a warrantless arrest.	Can be used for any legal purpose.	Collected on parking and pedestrian offenses if peace officer issued citation.	
<b>WF</b> Warrant Fee (Art. 102.011(b), C.C.P.)	\$50 for service of a peace officer processing or executing a warrant. Collected upon conviction.	If another entity other than the entity that issued the warrant serves the warrant and makes a request within 15 days of the arrest, upon conviction, the city must send the money to the arresting agency.	Used for any legal purpose.	
<b>BSF</b> Building Security Fee (Art. 102.017, C.C.P.)	\$3 for every case, including when deferred is granted.	Collected on parking and pedestrian offenses.	May be used only as designated by Art.102.017, C.C.P.	
<b>TF</b> Technology Fund (Art. 102.0172, C.C.P.)	\$4 for every case, including when deferred is granted.	Collected on parking and pedestrian offenses.	May be used only as designated by Art. 102.0172, C.C.P.	
<b>Expense Fee</b> (Art. 45.0511, C.C.P.)	Judge's discretion to require when dismissing a case when general deferred has been completed; can be up to the amount of the fine assessed but not imposed.	Can be used for any legal purpose; if offense is a traffic offense, must include amount in Excess Fines fund 30% revenue cap (cities under 5,000 population).		
<b>\$10 Fees</b> (Arts. 45.0511(f) & 45.052, C.C.P.) (Secs. 502.407; 521.026; 548.605, T.C.)	One \$10 fee can be assessed when granting DSC; two \$10 fees can be assessed when granting teen court—one goes to the city and one goes to the teen court (teen court accounts to the court for the fee); when dismissing expired registration, expired driver's license, and expired inspection certificate.	Can be used for any legal purpose.		
<b>Jury Fee</b> (Art. 102.004, C.C.P.)	\$3 fee assessed upon conviction by a jury.	Can be used for any legal purpose.		
<b>Summons Fee</b> (Art. 102.011(4), C.C.P.)	\$35 for service of a summons by a peace officer; assessed upon conviction.	Assessed on child when court summons parents.	Assessed on defendant if court summons defendant.	Used for any legal purpose.
<b>Subpoena Fee</b> (Art. 102.011(3), C.C.P.)	\$5 for service of a subpoena by a peace officer; assessed upon conviction.	Can be used for any legal purpose.		
<b>Special Expense Fee</b> (Art. 54.2031, C.C.P.)	\$25 may be imposed if warrants executed on failure to appear or violate promise to appear charges.	City must adopt ordinance in order for the court to collect.	Money goes into city general fund for any legal purpose.	
<b>Costs for Officer Testifying Off-Duty</b> (Art. 102.011(i), C.C.P.)	Defendant pays costs of overtime paid to officer time spent testifying while off duty or for traveling to and from testifying.	Used to defray officer expenses. Amount varies depending on officer's salary.		
<b>Jury Trial Failure to Appear Costs</b> (Art. 45.026, C.C.P.)	The costs incurred for impaneling the jury when a defendant fails to appear for jury trial. Amount varies.	Can be used for any legal purpose.		
<b>Jury and Failure to timely Withdraw Jury Trial Request</b> (Art. 102.004, C.C.P.)	\$3 collected upon conviction when a defendant requests a jury trial and withdraws the request within less than 24 hours of the time of trial.	Can be used for any legal purpose.		
<b>Time Payment Fund Judicial Efficiency Fund</b> (Sec. 51.921, G.C.)	\$2.50 of the \$25 time payment fee goes to this fund to be used to improve judicial efficiency.	\$10 of the \$25 goes to general revenue for any legal purpose.		

**Note:** Other than traffic fines and seatbelt and child safety system fines, the fines collected by the court may be used by the city for any legal purpose.



# RESOURCES FOR YOUR COURT

## Computer Assisted Legal Research

In FY02, at the recommendation of the Judicial Committee on Information Technology (JCIT), the Office of Court Administration (OCA) again entered into contracts with both the Lexis-Nexus Group and the West Group to provide on-line Computer Assisted Legal Research (CALR) packages that provide discounts for Texas courts. The CALR contracts have been renewed for another year with the terms being essentially the same as last year: the Lexis-Nexis fee being increased less than 10 percent and the West fee is unchanged. If you are a current subscriber, no action is necessary on your part to continue; your monthly invoice will be sent reflecting the new increased fee for Lexis-Nexis group (from \$15 to \$16 and from \$25 to \$27) and no change for West group.

If you are not a current subscriber, every court user should check out the details of the offer. Administrative and court support personnel are requested to help spread the word by passing the following contact information on to the judge:

### WEST GROUP:

Jennifer Koithan  
E-mail: [jennifer.koithan@westgroup.com](mailto:jennifer.koithan@westgroup.com)  
Telephone: 800/858-9378 (x7110)  
Fax: 713/224-5699

### LEXIS-NEXIS GROUP

Jennifer Lillion  
E-mail: [jennifer.lillion@lexisnexis.com](mailto:jennifer.lillion@lexisnexis.com)  
Telephone: 800/544-7390 (x4177)  
Fax: 937/432-3878

## Finding Licensed Court Interpreters

The web site for the Texas Department of Licensing and Regulation [[www.license.state.tx.us/](http://www.license.state.tx.us/) LicenseSearch] has been updated to include information on all licensed court interpreters in Texas. On that search site you should first select "Licensed Court Interpreters" from the first pull-down menu. Then you may proceed to narrow your search by language, by typing the language in the "Inquire by Endorsement" window. The search can also be made by county, city, or zip code. Each of those selections has a pull-down menu or blank window. A search can be made for an interpreter by name or license number as well. Once results are found, you will be presented with available interpreters' license numbers, names, addresses, and telephone numbers, as well as the languages they can translate.



## Court Continuity Planning

**Keeping the Doors Open, or Reopening Them After a Catastrophe**

*May 14 - 16, 2002  
Phoenix, Arizona*

-  **Fire in Maricopa County Courthouse**
-  **Florida Courts Plan for Hurricanes**
-  **Harris County Courthouse Floods**
-  **King County Courthouse Sways with the Earthquake**
-  **Essex County Courts Close Following Terrorist Attack on Trade Center**

Everyone believes disasters only happen to other people. Yet, as the headlines scream, catastrophic events can happen to anyone, at almost any time. From hurricanes, tornados, and rainstorms to fire, earthquakes, terrorism, and civil disorder, disasters that threaten the ability of the court to remain open do happen.

This workshop will explore what we think we know about disaster planning in the face of what our colleagues have actually experienced. Prior to the workshop, the attendees will be asked to complete a survey that describes their experience with court disaster planning and identify the plans that are in place in their courts. The workshop content will be adjusted to reflect the experience and issues identified.

The workshop is designed for judges, clerks, state and local administrators, and policy makers. The fee for the workshop is \$650 including conference materials, continental breakfasts, and breaks.

The workshop will be held at the Trial Court Leadership Center, located in the Law Library of the Maricopa County Superior Court at 101 W. Jefferson, Phoenix, Arizona.

Room rates at the Hyatt Regency Phoenix at Civic Plaza are \$79 per night, plus tax. All reservations for the hotel will be made on an individual basis by calling 602/252-1234 or by faxing the hotel at 602/254-9472. Reservations must be made no later than April 18, 2002 to ensure the discounted rate. The hotel is ten minutes from the Sky Harbor International Airport; and a five minute walk from the site of the program. The group rate will be also available two days prior and two days after the workshop. When making your reservations, please mention The Justice Management Institute to receive the discounted rate. For additional information about this program, including the agenda and biographic information about the presenters, contact Douglas Somerlot at The Justice Management Institute at dsomerlot@jmijustice.org or by calling 303/831-7564.

## **GCAT 3<sup>rd</sup> Annual Conference & Workshop**

The Government Collectors Association of Texas will offer its annual conference and workshop in Kerrville on May 29-31, 2002 at the Inn of the Hills Resort. The program will begin

at 1:00 p.m. on May 29<sup>th</sup> and concludes at noon on May 31<sup>st</sup>. In addition to the business meeting of the association, the workshop will focus on successful fine collection programs operating in Texas, cutting edge collection software and technology tools, and methods for handling difficult offenders and locating delinquent offenders. For additional information, go to [www.govcat.net](http://www.govcat.net).

## **TYLA Produces Parental Information**

The Texas Young Lawyers Association (TYLA) has developed a program for parents of Texas youth. The presentation is called *Borders and Boundaries* and consists of an instructional video, a live presentation, and booklets that each parent may keep. The program is designed to "educate parents on the civil and criminal liability issues surrounding their children's behavior."

Through a grant from the Texas Bar Foundation, the Young Lawyers are able to present the program free of charge. For more information on *Borders and Boundaries*, call 800/204-2222, extension 6429.

## **National Youth Court Conference 2002**

Youth court professionals and both adult and youth volunteers are invited to attend a national confer-

ence on April 14-16, 2002 in Arlington, Virginia. Youth court programs are also known as teen, peer, or student courts. The conference is promoted as an opportunity to: (1) learn new approaches to operating youth courts; (2) network and share ideas with other youth court staff, youth volunteers and national leaders in the juvenile justice field; (3) participate in specialized training sessions; (4) choose from over 65 quality workshops; and (5) visit the nation's Capitol and historic sites. The conference will be held at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway in Arlington, which overlooks the nation's Capitol from the Virginia side of the Potomac River. The registration fee varies from \$100 to \$180 depending on the type of registration and when you register. All registrations must be received by March 29, 2002, although March 15<sup>th</sup> is the deadline for the discounted room block and for refunds. March 1, 2002 is the deadline for discounted early registrations. The conference is co-sponsored by the National Youth Court Center, the American Probation & Parole Association (APPA), OJJDP, NHTSA, and the Juvenile Accountability Incentive Block Grant Program. For more information, contact National Youth Court Center, c/o APPA, P.O. Box 11910, Lexington, KY 40578-1910 (859/244-8193) or go to [www.youthcourt.net](http://www.youthcourt.net).

## **4MYTEEN On- Line Seat Belt Course**

4MYTEEN, a teen drivers' monitoring service, is dedicated to rewarding safe teen drivers for their exhibition of responsible driving and to changing dangerous teen driving behaviors.

The service allows parents of teen drivers to register their teens with 4MYTEEN. Information about the teens and the cars they drive is entered into the 4MYTEEN database. The parents of the teens are given a bumper sticker for placement on the teen's car, which reads, "How's My Driving - Call 1/900-MYTEEN." Citizens note teen driving behavior, and report the behavior to the toll-free hotline. As matches are made by the database, a report is generated describing the teen's driving behavior and forwarded to the parents of the registered teen. Parents can review the report and then take whatever action they deem appropriate. The service is being used by municipal and justice courts throughout Texas as an alternative sentencing option under deferred adjudication. For additional information, contact Tom Deats, 4MYTEEN, P.O. Box 172225, Arlington, Texas 76003 (817/483-9379).

## Alternative to MIP

Municipal courts in smaller towns are reporting difficulty in finding community service programs "related to education about or prevention of misuse of alcohol" that are assigned to minors found guilty of possession, consuming, or with a detectable amount of alcohol while driving. Section 106.04, Alcoholic Beverage Code. In Longview, Judge Lew Dunn has developed an alternative: the assignment of readings on the topic of drug and alcohol abuse. Minors are required to read the materials, take notes, and return to the court for a test over the materials. Judge Dunn finds that this satisfies the requirement of community service. The reading is in addition to the mandatory alcohol awareness course. The readings include:

Black, Claudia, *It Will Never Happen to Me*. (Preface, Introduction and Chapter 2).

Blande, Howard T. *The Personality of an Alcoholic* (Chapters 2 and 4).

Fingarette, Herbert. *Heavy Drinking: The Myth of Alcoholism as a Disease* (Chapter 5).

Graham, James. *Vessels of Rage, Engines of Power* (Pages 71-72 and Chapter 6).

Gross, Leonard. *How Much is Too Much?* (Chapter 4).

Meyer, Roberta. *The Parental Connection* (Pages 105-118).

Wholey, Dennis. *The Courage to Change* (G. Douglas Talbot, Pages 18-24).

"Deaths Caused by Alcohol." *Scientific American*. Vol. 275, p. 30-31 (December 1996).

Peele, Stanton. "Recovering From an All or Nothing Approach to Alcohol." *Psychology Today*, Vol. 29, p. 35 (September - October 1996).

### Hate Crimes continued from page 1

The charge was criminal mischief, and the defendant was charged with having tampered with property owned by another causing the owner substantial inconvenience.<sup>3</sup> Once I examined the facts and the extent of the tampering (including extensive use of banana peels and a rebel flag), I believed that a racially motivated crime had occurred.

Although I had been a municipal court prosecutor for almost five years at that time, I had not before had the occasion to acquaint myself with the Texas hate crimes legislation. The hate crimes provisions are found in the Texas Penal Code and the Texas Code of Criminal Procedure. According to Texas law, a "hate crime" has been committed when a certain original offense is motivated by bias or prejudice against a group

of people. The statute provides for an enhancement of an offender's punishment if such a finding is made.

Article 42.014 of the Texas Code of Criminal Procedure, entitled "Finding that Offense was Committed because of Bias or Prejudice," states:

In the trial of an offense under the Title 5 Penal Code [Crimes against the Person], or section 28.02 [Arson], 28.03 [Criminal Mischief], and 28.08 [Graffiti], Penal Code, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment of the case if at the guilt or innocence phase of the trial ...the fact finder, determines beyond a reasonable doubt that the defendant intentionally selected the person against whom the offense was committed or intentionally selected property damaged or affected as a result of the offense because of the defendant's bias or prejudice against a group identified by race, color, disability, religion, national origin or ancestry, age, gender, or sexual preference.

Section 12.47 of the Texas Penal Code, entitled "Penalty if Offense is Committed Because of Bias or Prejudice," states:

If an affirmative finding under Article 42.014, Code of Criminal Procedure [finding that the offense was committed because of bias or prejudice], is made in the trial of an offense other than a first degree felony or a Class A misdemeanor, the punishment for the offense is increased to the punishment prescribed for the next

Hate Crimes continued on page 27

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**Sample**

## Community Service Assignment

In connection with your case, the court hereby enters the following order:

You are ordered to go to the \_\_\_\_\_ Public Library and find the following book:

Graham, James. *Vessels of Rage, Engines of Power*. 362.292/ G76v

Instructions:

- (a) Read pages 71 and 72, noting the discussion of Alcoholics Anonymous and the Twelve Steps; **and**
- (b) Read Chapter Six, "Other Signs and Symptoms"; **and**
- (c) Take full and complete notes.

You are further ordered to return to the courtroom of the \_\_\_\_\_ Municipal Court on the following time and date: \_\_\_\_\_.

At that time, you must have with you several sharpened pencils and the notes that you have taken.

If you fail to appear in court at that time and date, you may be found in contempt of court.

After you arrive in court, a test will be given over the material you have read. If you pass the test, you will be given credit for your community service hours. If you fail the test, you will not receive credit for your community service hours, and you will be given a second assignment to complete.

It is so ordered.

Signed:

\_\_\_\_\_  
Judge

\_\_\_\_\_  
Date

Accepted, read, and understood:

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Parent



# ETHICS UPDATE

## Annual Report

Each year the Commission on Judicial Conduct prepares an Annual Report that outlines laws governing the Commission and its proceedings, the complaint process, a statistical analysis of the complaints, legislative concerns, and specific incidents of improper judicial conduct. Following are summaries of public and private sanctions issued by the Commission in FY01. A complete copy of the report is available from the Commission (877/228-5750) or TMCEC (800/252-3718).

### Public Sanctions



The Judge, with the exception of two reports, failed to timely file semiannual campaign finance reports with the Dallas County Clerk every year since 1990. The Judge also failed to timely file a “thirty-day-before election” report and an “eight-day-before election” report. The Judge entered into an Agreed Resolution and Order accepting the Texas Ethics Commission’s findings and conclusions that he had violated Section 254.063 of the Texas Election Code. [Violation of Article 5, Section 1-a(6) of the Texas Constitution, and Canons 2A and 4I(2) of the Texas Code of Judicial Conduct] *Public Reprimand of Thomas G. Jones, Justice of the Peace (08/20/01)*



The Judge retained a close friend to represent him, at a nominal fee, in a contested probate matter involving the estate of

the Judge’s late mother. While the probate dispute was still pending, the Judge failed to act impartially when he appointed his friend and attorney to act as *attorney ad litem* in a lucrative, private-pay custody dispute pending in the Judge’s court. After only two months as *ad litem*, the attorney had charged the litigants in the custody dispute more than \$72,000 in fees and costs. Those fees were approved by the Judge as reasonable and necessary despite compelling evidence to the contrary. At the time of the *ad litem* appointment, the Judge failed to disclose to at least one of the litigants in the custody dispute that he had an attorney-client relationship with the *ad litem*. The Commission found that the fees charged by and paid to the attorney by the Judge’s late mother’s estate in connection with the probate action were significantly less than the fair market value of the work actually performed by the attorney in the case. The Commission also found that the fees charged by and paid to the attorney as *ad litem* in the child custody action significantly exceeded the fair market value of the work actually performed by the *ad litem*. The Commission discovered that the actual time and resources expended by the attorney in both the probate action and the custody case were not accurately reflected in records produced to the Commission in connection with its inquiry. The Commission found that, during the course of his involvement in the custody case, the attorney represented to the parties and their counsel that he had a great deal of influence with the Judge and would receive favorable rulings from the Judge because of their close

relationship. A review of court records in the custody case revealed that the attorney did receive favorable treatment and rulings from the Judge. [Violation of Article V, Section 1-a(6)A of the Texas Constitution and Canons 2A, 2B, 3B(5), 3B(8), 3C(4) and 4D(4) of the Texas Code of Judicial Conduct] *Public Reprimand of Craig Fowler, District Court Judge (06/29/01)*



While responding to a reported automobile accident, a police officer found the Judge and his automobile at the accident location, and the Judge exhibited all of the signs of an intoxicated person. After the Judge repeatedly refused to submit to field sobriety tests and to a breath sample test, the Judge was arrested and charged with driving while intoxicated. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2A of the Texas Code of Judicial Conduct] *Public Reprimand and Order of Additional Education of Jaime Garza, County Court at Law Judge (05/31/01)*



The Judge improperly held dual employment as a Justice of the Peace and a law enforcement officer in neighboring counties. Such positions created an appearance of impropriety, bias, prejudice, and partiality in the handling of criminal cases. Furthermore, it would appear to the public that the Judge’s fellow law enforcement officers are in a special position to influence the Judge in his decisions. A public statement was issued by the Commission on Judicial Conduct (PS-2000-1), but the Judge continued to hold both positions

until ordered by the Texas Supreme Court that he be suspended from judicial office. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 4A(1), and 4D(1) of the Texas Code of Judicial Conduct] *Public Reprimand of Randy Ellisor, Justice of the Peace (04/24/01)*

 The Judge, while presiding over a complicated family law case involving the custody of an infant, improperly entered an order reinstating the case more than 30 days after the case had been dismissed with prejudice; conducted hearings and entered orders without according interested parties and their attorneys the right to be heard according to law; issued a *capias* with no provision for a bond that resulted in the arrest and overnight detention of a 76-year-old, non-party witness; failed to rule on a timely-filed Motion to Quash that challenged the legal sufficiency of the subpoena previously issued to the same non-party witness; allowed the non-party witness to be interrogated and harassed outside the presence of her counsel and without the constitutional protections normally afforded an arrestee; acted with prejudice against one of the attorneys in the case; failed to conduct proceedings involving that attorney and/or his clients with the patience, courtesy, and dignity expected of a judicial officer; and dismissed the lawsuit for want of prosecution with the knowledge that interested parties and their attorneys were pursuing emergency mandamus or appellate relief in the Texas Supreme Court. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canons 2A, 3B(4), 3B(5) and 3B(8) of the Texas Code of Judicial Conduct] *Public Reprimand of Annette Galik, District Court Judge (09/18/00)*

 In responding to a reported disturbance at the Judge's apartment complex, police officers found the Judge outside and witnessed that he appeared highly intoxicated, noting an odor of alcohol, unsteadiness, and slurred speech. The Judge was arrested and charged with Disorderly Conduct. In his appearance before the Commission, the Judge testified that he mixed alcohol and prescription pain medication that evening, which caused him to be impaired. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2A of the Texas Code of Judicial Conduct] *Public Warning of Roberto Vargas, Former Municipal Court Judge (08/20/01)*

 The Judge failed to obtain the mandatory judicial education hours during fiscal year 2000. Additionally, the Judge provided false and misleading information to the Commission concerning the date she assumed the bench and the reasons why she could not obtain the required judicial education. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A and 3B(2) Texas Code of Judicial Conduct] *Public Warning of Gina M. Benavides, Former Municipal Court Judge (06/01/01)*

 The Judge failed to comply with the law when he operated his vehicle under the influence of alcohol and then failed to stop and give information after an accident in which he was involved. The Judge knew, or should have known, that as a public official and member of the judiciary, his arrest for Driving While Intoxicated and Failure To Stop and Give Information would severely compromise the public's confidence in the integrity of the judiciary. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2A of the Texas

Code of Judicial Conduct] *Public Warning and Order of Additional Education of Robert Burdette, Senior District Judge (05/31/01)*

 While running for another judicial office, the Judge distributed campaign literature which contained false or misleading information, including pledges or promises that, if elected, he would advocate the rights of victims of violent crimes and would treat the criminals in those cases more harshly. Additionally, the campaign literature contained photographs of the Judge that would indicate to voters that then Texas Governor George W. Bush, and former President Ronald Reagan had endorsed his candidacy when they had not. [Violation of Canons 2A, 5(1), 5(2)(I), and 5(2)(ii) of the Texas Code of Judicial Conduct] *Public Warning of Tom Price, Court of Criminal Appeals Judge (01/25/01)*

 The Judge engaged in a scheme whereby the Judge resigned as a municipal judge every year and was later reappointed to the same position in an effort to avoid the requirement that the Judge obtain judicial education. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, Canons 2A, 3B(2) of the Texas Code of Judicial Conduct, and Rule 4 of the Texas Rules of Judicial Education] *Public Warning and Order of Additional Education of Joe Chandler, Municipal Court Judge and Justice of the Peace (10/24/00)*

 The Judge improperly exercised his contempt authority against several high school students by failing to provide proper notice to all interested parties, including the parents of the minor students, of the accurate time and location, the high school's auditorium, of the contempt hearings. The Judge also failed to afford the adult students the opportunity to obtain

counsel prior to the contempt hearings. [Violation of Canon 2A of the Texas Code of Judicial Conduct] *Public Admonition of Joel C. Clouser, Sr., Justice of the Peace (08/20/01)*



The Judge abused her judicial position by calling two other judges on behalf of a relative and an acquaintance in an effort to influence those judges' decisions and obtain favorable treatment in their traffic cases pending in the judges' courts. The Judge's contact with the two judges constituted an improper *ex parte* communication. The Judge also left phone messages for a county attorney to further discuss one of the two cases. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2B, 6C(2) of the Texas Code of Judicial Conduct] *Public Admonition of Linda Ray, Justice of the Peace (05/25/01)*



The Judge, at the request of a defendant's father, wrote a letter of support on behalf of a defendant in a criminal case pending in the District Court of Cameron County. The Judge wrote the letter on his official court letterhead and signed it in his official capacity as Judge of the Municipal Court. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2B of the Texas Code of Judicial Conduct] *Public Admonition of Eliseo B. Vega, Municipal Court Judge (06/20/01)*



During a truancy hearing, because the Judge was not satisfied with a mother's explanation for her child not attending school, the Judge ordered a Hispanic mother and her seven-year-old child to be escorted to a holding cell outside the courtroom to be detained until the Judge could decide "what to do" with them. Additionally, the Judge made a biased comment to the mother, stating that if the mother did not like the laws in

Texas, she could choose one of three bridges back to Mexico. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A and 3B(6) of the Texas Code of Judicial Conduct] *Public Admonition of Oscar Tullos, Justice of the Peace (05/31/01)*



On December 19, 1999, the Judge officially filed as a Republican candidate for United States Representative for District 17, in what was to be a contested election. He did not, however, resign from his position as a magistrate until March 8, 2000, a day after a member of the media questioned him about this conflict. The Judge's failure to resign upon becoming a candidate in a contested election for a non-judicial office was in violation of the canons and cast public discredit upon the judiciary. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 5(4) of the Texas Code of Judicial Conduct] *Public Admonition of Darrell Clements, Former Magistrate (05/25/01)*



When stopped on suspicion of driving while intoxicated, the Judge repeatedly tried to dissuade a Department of Public Safety (DPS) Officer and the officer's supervisor from arresting him because of the negative effect it would have on him due to his position as a district judge. The Judge attempted to use the prestige of his office to escape the consequences of being stopped and detained for suspicion of driving while intoxicated. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2B of the Texas Code of Judicial Conduct] *Public Admonition of Frederick Edwards, District Court Judge (04/12/01)*



The Judge participated in an improper *ex parte* communication with the defendant's attorney, during which a discussion

of the pending charges against the defendant was held. Additionally, the Judge adjudicated a criminal matter in the absence of the defendant's attorney, and when no formal case had been opened against the defendant and no charging instrument had issued. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A and 3B(8) of the Texas Code of Judicial Conduct] *Public Admonition of Rodolfo Delgado, Former County Court at Law Judge (04/12/01)*



The Judge repeatedly engaged in improper *ex parte* communications about the merits of a case involving a traffic citation. In the communications, the Judge represented that she would dismiss the case but failed to do so. Three years later, the defendant was detained by a law enforcement officer on a warrant issued by the Judge's court in the pending traffic case. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 6C(2) of the Texas Code of Judicial Conduct] *Public Admonition of Joyce Weems, Former Justice of the Peace (12/19/00)*



The Judge failed to credit a fine payment to the proper defendant and to close the defendant's case. Two years after the fine had been paid, the defendant was detained on a warrant issued by the Judge's court in the same traffic case. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 6C(2) of the Texas Code of Judicial Conduct] *Public Admonition of Joyce Weems, Former Justice of the Peace (12/19/00)*



The Judge set fire to and destroyed five Central Power & Light Company (CP&L) utility poles in order to clear an area on his property to build a stock pond. As a result, the pole burning incident received extensive

media attention. The Judge's failure to observe the highest standard of conduct in his dealings with CP&L, and the resultant media attention surrounding the pole burning incident, severely compromised and undermined the public's confidence in the integrity of the judiciary. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution] *Public Admonition of Terry Canales, District Court Judge (12/19/00)*

 The Judge commanded, without notice or explanation, an attorney's presence in his court for the sole purpose of interrogating and lecturing the lawyer about her out-of-court remarks concerning the Judge's ability to be fair and impartial toward her client; interrogated the lawyer in a manner that was neither patient, dignified, nor courteous; and was motivated in summoning the lawyer to his court out of a fear of public criticism and the need to exert his power as a Judge through intimidation and fear. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 3B(2), and 3B(4) of the Texas Code of Judicial Conduct] *Public Admonition of Sam Katz, District Court Judge (12/19/00)*

 The Judge used his county computer to forward an E-mail message asking people to support the candidacy of George W. Bush for President; actively assisted law enforcement officers attempting to serve an arrest warrant on a probationer by acting as a "backup" with weapon drawn and wearing a bulletproof vest; and met privately with a female probationer in his chambers outside the presence of counsel, a probation officer, or a representative from the district attorney's office. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 2B,

3B(5), 4A(1), 4A(2), and 5(3) of the Texas Code of Judicial Conduct] *Public Admonition of Sam Katz, District Court Judge (12/19/00)*

#### Private Sanctions

 The Judge lent the prestige of the Judge's judicial office when the Judge's name appeared as a supporter on various candidates' campaign literature. Additionally, the Judge stated to a newspaper reporter the Judge's support for a specific candidate. Numerous media then reported the Judge's endorsement of the specific candidate. The Judge was also unfamiliar with the law relating to contempt procedures. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 2B, 3B(2) and 5(3) of the Texas Code of Judicial Conduct] *Private Reprimand*

 The Judge took actions that created the impression that the Judge was improperly engaging in law enforcement activities when the Judge pursued a relative in her car at a high rate of speed after the relative took the Judge's grandchildren from the Judge's home. The Judge initiated a police chase that increased the danger to which the Judge's grandchildren were exposed. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution] *Private Reprimand*

 The Judge's rude, undignified and discourteous conduct towards court staff was inconsistent with the proper performance of the Judge's duties. The Judge rudely admonished and directed profanity, in Spanish, towards a court clerk in open court. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 3B(4) of the Texas Code of Judicial Conduct] *Private Warning*



The Judge failed to be dignified and courteous to courthouse security personnel when the Judge engaged in a confrontation with them as a result of their refusal to allow a court reporter's recorder to pass through security. The reporter had neglected to have required identification available and became upset when the reporter's equipment was detained. The reporter reported the incident to the Judge, several floors away, and the Judge appeared at the security site in an agitated demeanor, threatening the guards with contempt, demanding to see supervisors, detaining a passing attorney as a witness, and advising the guards that Judges were "gods" in the courthouse. Although the Judge denied being upset, the perception of his poor demeanor was reported consistently by several independent witnesses. It was undisputed the Judge could have obtained the recording device on behalf of the court reporter without engaging in the verbal attack. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 3B(4) of the Texas Code of Judicial Conduct] *Private Warning*



The Judge, in an attempt to get counsel to talk slower, used the phrase "oral sex" once before the jury and once outside the presence of the jury. The Judge also admonished a witness to not "snort." This conduct was inappropriate and lacked the dignity and courtesy due litigants, jurors, witnesses, lawyers, and others with whom the Judge deals in an official capacity. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 3B(4) of the Texas Code of Judicial Conduct] *Private Warning*



The Judge lent the prestige of the judicial office to advance the private interests

of a criminal defendant, when the Judge wrote a letter of support on official judicial letterhead on behalf of a criminal defendant whose case was pending in another court. The Judge's actions in the matter were inconsistent with the proper performance of the Judge's duties. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2B of the Texas Code of Judicial Conduct] *Private Warning*



The Judge lent the prestige of the Judge's judicial office to advance the private interest of others by voluntarily appearing in the Judge's judicial robe in an advertisement for a community college. The Judge's appearance in the advertisement was inconsistent with the proper performance of his duties and cast public discredit on the judiciary. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2B of the Texas Code of Judicial Conduct] *Private Warning*



The Judge, while at the county sheriff's department, threatened a litigant, whose case was pending in the Judge's court, with physical combat. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A and 3B(4) of the Texas Code of Judicial Conduct] *Private Warning*



The Judge's actions cast public discredit upon the judiciary when he participated in an altercation and consumed alcoholic beverages at a public event creating an appearance to law enforcement officers and others that the Judge was publicly intoxicated, which caused the Judge to be arrested. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution] *Private Warning*



The Judge had improper *ex parte* communications with a plaintiff's attorney and the plaintiff's expert witness in a civil case

the Judge was hearing. The Judge had a conversation with the plaintiff's attorney, at recess, regarding an exhibit and made suggestions for closing argument. The Judge also had a private phone conversation with an expert witness, who had been excused from the same civil trial, and asked questions on an exhibit the witness had presented. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 3B(8) of the Texas Code of Judicial Conduct] *Private Admonition*



The Judge's actions were not consistent with the proper performance of the Judge's duties when the Judge confiscated a defendant's jewelry and retained possession of it until the defendant returned to court with an attorney. The Judge's authority only extended to having interlock devices placed on any cars accessible to the defendant to ensure the defendant returned to court with an attorney. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution] *Private Admonition*



The Judge signed an abstract of judgment indicating that a "citation for personal service was served upon the defendant" and subsequently rendered a default judgment against a defendant who had never been served with citation. The court's file contained no evidence that the defendant had ever been served with citation. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A and 3B(8) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*



The Judge acted without legal authority when the Judge granted deferred adjudication without requiring a traffic defendant to enter a plea,

then ordered the defendant to pay a fine. When the defendant did not pay the fine, the Judge issued a warrant and failed to allow a trial for the charge of failure to appear. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2A of the Texas Code of Judicial Conduct] *Private Order of Additional Education*



The Judge lacked adequate administrative and record-keeping procedures for keeping track of correspondence, motions, and other court records received from litigants and/or their attorneys. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution] *Private Order of Additional Education*



The Judge lent the prestige of the Judge's judicial office when the Judge's name appeared as a supporter on various candidates' campaign literature. Additionally, the Judge stated to a newspaper reporter the Judge's support for a specific candidate. Numerous media then reported the Judge's endorsement of the specific candidate. The Judge was also unfamiliar with the law relating to contempt procedures. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 2B, 3B(2) and 5(3) of the Texas Code of Judicial Conduct] *Private Reprimand and Order of Additional Education*



The Judge allowed a difficult relationship with a former employee to improperly influence the Judge's judgment and conduct. The Judge's lack of judgment manifested itself in the unreasonable refusal to permit the former employee any access to information necessary for the preparation of a record for an appeal. [Violation of Canon 2B of the Texas Code of Judicial Conduct] *Private Reprimand*



The Judge failed to obtain the required hours of mandatory judicial education for Fiscal Year 2000. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct and Rule 2a(2) of the Rules of Judicial Education] *Private Warning*



The Judge improperly used the Judge's position to influence another Judge's decision by writing a letter to recommend prospective adoptive parents in a case then pending before the receiving Judge. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct] *Private Admonition*



The Judge allowed a business to use the prestige of the Judge's judicial office to advance its own commercial interest. The Judge allowed a photograph to be taken of the Judge for an advertisement for a business without taking adequate precautions to ensure that the Judge's name and title would not be associated with the business. [Violation of Canon 2B of the Texas Code of Judicial Conduct] *Private Admonition*



The Judge demonstrated bias for an attorney by allowing attorney's praises on an earlier decision in the case to improperly influence the Judge's judgment to find favorably for the complementing attorney. [Violation of Canon 3B(5) of the Texas Code of Judicial Conduct] *Private Admonition*



The Judge, by responding orally to a jury's question concerning the court's charge without the attorneys' knowledge or presence, denied the attorneys the right to be heard regarding the question to the charge in a civil matter. [Violation of Canon 3B(8) of the Texas Code of Judicial Conduct, and Rule 286 of the Texas Rules of

Civil Procedure] *Private Admonition*



The Judge exceeded the Judge's legal authority by becoming involved in a private legal matter not pending in the Judge's court. The Judge also lent the prestige of the Judge's office to advance the interest of others by writing a letter to tenants to advise them that the Judge was holding a deposit check for a landlord who had requested the tenants move. When the landlord filed a forcible entry and detainer case in the Judge's court regarding the same tenants, the Judge voluntarily recused because of the Judge's involvement. [Violation of Canons 2A and 2B of the Texas Code of Judicial Conduct] *Private Order of Additional Education*



The Judge relied on legal authority regarding unpaid rent that was no longer in effect. As a result, the Judge refused to grant the litigant a default judgment and deprived the litigant of a legal remedy made available by the Texas Legislature to effectively pursue claims for unpaid rent in conjunction with possession of the premises. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct and Texas Property Code Section 24.0051] *Private Order of Additional Education*



The Judge improperly deprived a citizen of the right to seek legal redress for a claim of damages through the courts by dismissing the citizen's case for not providing documentary proof to support an affidavit of indigency. The Judge's request for support documentation violated Texas Rules of Civil Procedure Rule 145, which indicates a certified affidavit is presumed to represent the truth of indigency. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*



The Judge charged and collected a filing fee for a peace bond application in violation of the Texas Code of Criminal Procedure, which states that a justice court is not authorized to charge or collect a filing or service fee for a peace bond application. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*



The Judge did not comply with the relevant provisions of the Texas Code of Criminal Procedure and the Texas Transportation Code in the handling of a criminal case. The Judge also refused to provide a copy of a criminal complaint, a public record, to a citizen. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*



The Judge erred in holding a defendant in direct contempt and ordering the defendant to spend 24 hours in jail. The Judge allowed a continuance for the defendant to hire an attorney. When the defendant returned to court without counsel, the Judge held the defendant in direct contempt. However, the defendant should have been held in constructive contempt. The well-established rule is that failure to comply with a court order constitutes constructive contempt. The procedure for constructive contempt is to allow the defendant an opportunity to appear with counsel to defend the contempt charge at a show cause hearing. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*



The Judge did not comply with the Texas Code of Criminal Procedure (Article 17.292) in issuing a *Magistrate's*

*Emergency Protective Order.* The Code of Criminal Procedure requires that a subject of the protective order be under arrest and be appearing before a magistrate at the time the order is issued. The subject of the protective order the Judge issued was neither under arrest or appearing before the Judge. The order was ultimately used against the subject in a post-divorce child custody matter. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*



The Judge failed to comply with the law and thereafter, demonstrated a lack of knowledge of the Texas Code of Criminal Procedure, the Texas Penal Code, and the Texas Rules of Civil Procedure. Specifically, the Judge failed to comply with the law by the following: issuing an evidentiary search warrant without proper authority; setting a civil action for trial prior to the defendant's answer date; conducting an independent investigation into the merits of a civil action pending in the Judge's court based on information obtained through a third party source; failing to advise a criminal defendant of the constitutional right to be represented by an attorney and to have a trial by jury; failing to obtain a written waiver of the defendant's right to a trial by jury; and charging a defendant with the wrong offense. [Violation of Canon 2A and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*



The Judge allowed relationships with defendants' family members to influence the Judge's judgment. Because of the relationships, the Judge did not follow proper bail procedures instead, authorized the local sheriff to release defendants on personal bond. [Violation of Canons 2A, 2B, and

3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*



The Judge lent the prestige of the Judge's office to advance the private interests of others by magistrating family members, despite warnings from public officials that the Judge should not do so. The Commission found that of the 13 individuals the Judge magistrated, since the Judge assumed the bench, nine were either related to or were known to the Judge. [Violation of Canons 2B and 3B(5) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*



The Judge, in failing to conduct jury trials in criminal matters, admitted to lack of training and a basic understanding of how to conduct jury trials in criminal cases. [Violation of Canon 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*



The Judge acted without patience, dignity, or courtesy when the Judge verbally attacked and humiliated a defendant by commenting that the defendant was stupid. While the Judge denied the attack, witnesses to the Judge's courtroom demeanor related that the Judge made similar rude, demeaning, and humiliating comments to defendants appearing in the Judge's court. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*



The Judge acted imprudently, after observing an individual commit multiple traffic violations, by following the individual to a parking lot to comment that the Judge would remember how the individual drove that morning in the event the individual appeared in the Judge's court. Such a

statement indicates the Judge would be unable or unwilling to remain impartial and unbiased in a case in the Judge's court involving the individual. [Violation of Canon 4A(1) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

## Ethics Advisory Opinions

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 to 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. To view all previous ethics advisory opinions, visit [www.courts.state.tx.us/judethics](http://www.courts.state.tx.us/judethics).

### District Judge as University Regent (2002)

#### Ethics Opinion 275

**Question:** May a district judge serve on the board of regents of a state university? The duties of the board are listed in Texas Education Code, Section 65.01 *et. seq.*?

**Answer:** No, a district judge may not serve on the board of regents of a state university. 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.” The Texas Education Code 65.16 and 65.31 lists the duties of the board to include the employment and supervision of the chief executive officer of the system, and the establishment of policies for the general management of the university system. These activities are exactly those prohibited by Canon 4H. The judge should also be mindful of the restrictions of Canon 4A. This section of the Code provides in part that, “A judge shall conduct all of the judge’s extra-judicial activities so that they do not... interfere with the proper performance of judicial duties.” If the judge’s judicial district includes one of the universities that she would be supervising she would be required to recuse herself in any case involving the university.

See also Opinion 246.

### **Judge Presenting CLE at Private Law Firm (2002)**

#### **Ethics Opinion 276**

**Question:** May a judge speak at an in-house CLE event sponsored by a law firm? The audience will consist solely of employees of the law firm.

**Answer:** No. It is the belief of the committee that the presentation by the judge of a CLE program for a private law firm violates 2B of the Code of Judicial Conduct. Section 2B prohibits a judge from lending the prestige of judicial office to advance the private interests of others. It also prohibits the judge from allowing anyone to convey an impression that they are in a special position to influence the judge.

**Question:** If the law firm allows any lawyer not affiliated with the firm who wishes to attend the CLE event to do so without charge, but does not publicize the event, change the answer?

**Answer:** No, the same reasoning as above applies. With no invitations the CLE remains private.

**Question:** A judge is invited by a local bar association to speak at a CLE event sponsored by the bar association. Members can attend at a reduced price from non-members. The judge is not receiving any money from the entry fee. By speaking at an event whose entry fee schedule encourages membership in a bar association, is the judge promoting the private interests of that group?

**Answer:** A judge may speak at such an event. The event is open to all lawyers and therefore no one group of lawyers is benefiting from the event.

**Question:** A judge is invited to speak at a CLE event sponsored by a law school. The law school hopes to make money for their scholarship fund by virtue of the quality speakers they have recruited for the event. The judge knows this. By speaking at such an event is the judge lending the prestige of office to the private interests of the law school?

**Answer:** The judge may speak at the law school event. Canon 4B allows a judge to speak and participate in activities concerning the law. Canon 4C(2) allows a judge to be a speaker at an educational organization’s fund raising event.

### **May a Judge Sign an Affidavit Certifying an Attorney’s Legal Proficiency? (2002)**

#### **Ethics Opinion 277**

**Question:** May a judge sign an affidavit attesting to the competency of an attorney who practices before the judge to be used in a grievance proceeding against the lawyer?

**Answer:** No. Canon 2B prohibits the lending of the prestige of judicial

office to advance the private interests of another and convey to others the impression that the attorney is in a special position to influence the judge. In addition, a judge is specifically prohibited from voluntarily testifying as a character witness. The judge could testify at the grievance hearing if subpoenaed.

### **May a Judge Accept an Honorarium from the Justice Department for Reviewing Grant Applications? (2002)**

#### **Ethics Opinion 278**

**Question:** A judge has been asked by the Justice Department to review grant applications (VAWA, violence against women). The Justice Department indicated they use judges for this all the time and want to pay the judge an honorarium. May the judge take the honorarium?

**Answer:** No. Canon 4(B)(2) allows a judge to “make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.” Canon 4(D)(4) prohibits a judge from accepting a gift, bequest, favor, or loan unless it is from relative or friend on a special occasion, it is not excessive and the donor has no interest that might come before the Court and there is no reasonable perception of an intention to influence the judge. Penal Code Section 36.07. Acceptance of honorarium states that a public servant commits an offense if he/she agrees to accept an honorarium in consideration for service that the public official would not have been requested to provide but for the public servant’s official duties or position.

See Opinions 20, 86, 215.

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**Judge Serving on Community Associations (2002)**

**Ethics Opinion 279**

**Question:** May a judge serve as an officer of a non-profit neighborhood association? The purpose of the organization is to promote the well being of the neighborhood by representing the interest of its residents in matters of civic involvement, community interaction, security, and physical improvements of its environment. Service would not involve fund raising. The organization has never been involved in litigation.

**Answer:** Yes. A judge is permitted to serve as an officer of a civic organization not conducted for profit provided the judge may not use the prestige of judicial office to advance the private interest of the organization. See Opinions 108, 144, 152.

**Question:** May a judge serve on a homeowner's condominium board to help manage the building where the judge owns a condominium?

**Answer:** Yes. For the same reasons as above.

**Judge Serving in the DARE Organization (2002)**

**Ethics Opinion 280**

**Question:** (1) May a judge serve as president of DARE (drug educational awareness organization)? (2) May the judge's name be used on the letterhead used in fund raising solicitation so long as the judge is not actively involved in the fund raising? (3) May a judge handling criminal cases serve as DARE president when some funds are used to help the local police department or make civic speeches describing how DARE helps local DARE officers?

**Answer:** No, to all the questions above. Service as a DARE official would reflect adversely on the judge's

impartiality since part of the organization's purpose is to support the police and provide DARE officers with funds.

**May a Judge Serve on the Board of the Houston Volunteer Lawyers Program? (2002)**

**Ethics Opinion 281**

**Question:** May a judge serve on the Board of the Houston Volunteer Lawyers Program, an organization whose staff and volunteer attorneys appear as advocates in the judge's court? May a judge serve on the advisory board in an ex officio advisory capacity, not involved in decision or policy making?

**Answer:** No, as to both questions. See Opinion 270. Service in any capacity in an organization whose staff appears in the judge's court violates Canon 2. Canon 2 requires a judge to act at all times in a way that promotes the public confidence in the judge's impartiality. Canon 2 further prohibits lending the prestige of office to advance the private interest of others or to convey that others are in a special position to influence the judge.

**May a Judge Participate in a Conference Hosted by the Texas Association of Domestic Relations Officers? (2002)**

**Ethics Opinion 282**

**Question:** May a family court judge speak and/or participate in an annual conference hosted by the Texas Association of Domestic Relations Officers?

**Answer:** Yes, Canon 4 allows a judge to speak or participate in activities concerning the law, the legal system, and the administration of justice so long as such participation does not cast doubt on the judge's capacity to decide any issue that may come before the court or interfere

with the proper performance of judicial duties.

**May an Appellate Court Staff Attorney Perform Pro Bono Appellate Work? (2002)**

**Ethics Opinion 283**

**Question:** May an attorney employed at a state intermediate appellate court perform pro bono work on a federal appeal when the issue appealed involves only a federal issue and no state, Texas or otherwise, has concurrent jurisdiction? May the same attorney perform pro bono work on an appeal in another state?

**Answer:** No, to both questions. Canon 3 B(6), (8), (10) and 3C(2) require that appellate court staff attorneys are subject to the same ethical standards as the judge for whom they work. Canon 4G prohibits a judge from practicing law except as permitted by statute or this Code. Pro bono appellate work in a federal or sister-state requires the practice of law. No Code sections provide an exception to the prohibition against practicing law under the circumstances presented here.

**May a Judge's Spouse Host a Fund Raiser for a Judicial Candidate in the Judge Home? (2002)**

**Ethics Opinion 284**

**Question:** May a judge's spouse host a fund raiser for a judicial candidate in the judge's home?

**Answer:** No. A judge may not host, sponsor or give a fund raiser in the judge's home for a judicial candidate. Canon 5(3) states that a judge shall not authorize the public use of his or her name endorsing another candidate for any public office. Canon 2(B) prohibits lending the prestige of judicial office to others or to convey the impression that someone is in the special position to influence the judge. A fund raiser for a judicial

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candidate held in a judge's home violates all of these provisions.

While the Committee has long been cognizant of the independent nature of spouses of judicial members, the hosting of the event at the judges's residence crosses the line of permissible conduct. The public perception would be that the event is being sponsored by the judge.

It would be permissible for the spouse of the judge to sponsor the event at another location provided no reference to the judge is made or implied.

**Question:** May a person who believes they may later be appointed to a judicial position sponsor a fund raiser for a judicial candidate?

**Answer:** Yes, such a person could sponsor a fund raiser for a judicial candidate. The Code of Judicial Conduct only applies to sitting judges or official judicial candidates.

See opinions 73, 130, 259.

### **May a Judge Contact the District Attorney to Discuss the Conduct of an Assistant District Attorney Appearing in the Judges's Court? (2002)**

#### **Ethics Opinion 285**

**Question:** A judge is hearing a case in which an assistant district attorney is representing the state interests in a case involving Child Protective Services. Individual attorneys are representing the parents. May the judge hearing the case, after or during temporary hearings or after the final hearing contact the district attorney to advise him of the failure of the assistant district attorney to properly prepare or handle the court proceedings?

**Answer:** Yes, but only under limited circumstances. Canon 3B(8) provides that a judge shall not initiate or

permit ex parte communications concerning the merits of a pending or impending judicial proceeding. Conversation between the Judge and the District Attorney is permitted if it is confined to conduct of the assistant district attorney. If the conversation involves specifics of a case it may only be done after the case is final.

#### **Hate Crimes continued from page 16**

highest category of offense. If the offense is a Class A misdemeanor, the maximum term of confinement for the offense is increased to 180 days.<sup>4</sup>

In the context of my Class C misdemeanor case, the question for me was how or even if the hate crimes provisions applied. The governing provisions state that if a crime is motivated by bias or prejudice against a group, the court should make that finding, and the offense will be punished at the next highest category of offense. The provisions go on to say that such enhancement should be made to offenses *other than* first degree felonies and Class A misdemeanors (mandating punishment of Class A misdemeanors at a full 180 days if bias or prejudice is found).

Clearly, Class C criminal mischief is an offense under the Penal Code *other than* a first degree felony or a Class A misdemeanor. If the Class C misdemeanor is to be enhanced in accordance with the hate crimes provisions, it would be enhanced to a Class B level. Herein lies the question: The punishment range for a Class B misdemeanor is a fine not to exceed \$2,000.00, confinement in jail for a term not to exceed 180 days, or both.<sup>5</sup> At first glance, it may appear that the punishment for a Class C misdemeanor motivated by bias or prejudice would enhance from \$500.00 to \$2,000.00 in

accordance with Class B levels. However, Class B misdemeanors are also punishable by incarceration, and the municipal court has no jurisdiction of any offense that can result in incarceration even if the municipal court does not use that portion of the sentencing capabilities in punishing the offender. Because of such limitations, enhancement under the hate crimes provisions appears to be outside of the authority granted to municipal courts in Texas as promulgated by the Legislature. Therefore, perhaps unintentionally designed for this effect, it does not appear that victims of hate crimes have a voice at the municipal court level.<sup>6</sup>

Although the enhancement option is not available to the municipal court, there are options available to the municipal court in the pursuit of justice for a hate crime. It remains that the municipal court should make an affirmative finding of bias or prejudice in accordance with state law if bias or prejudice existed in the commission of the offense.<sup>7</sup> Likewise, prosecutors should ask for such a finding. Further, municipal courts should implement a mechanism to flag such findings so that the hate crime cases can be tracked. Such documentation can and will be useful for future legislatures to consider appropriate courses of action in cases like these. It is my intention that the Legislature instantly be made aware of the lack of ability of the municipal courts to properly punish offenses motivated by bias or prejudice. If the Legislature can be so made aware, it may enact provisions targeted at punishment for these types of offenses at the municipal court level sooner rather than later. At present, however, the best course of action may be to attempt to file the offense

**Hate Crimes continued on page 31**



# FROM THE CENTER

## TMCEC 2002 Schedule

### JUDGES

April 3-4, 2002  
Amarillo  
Ambassador Hotel  
3100 I-40 West - 79102  
806/358-6161

April 29-30, 2002  
(Attorney Judges Only)  
SPI  
Radisson Hotel  
500 Padre Boulevard - 78597  
956/714-5511  
Registration Deadline: 3/27

May 1-2, 2002  
(Non-Attorney Judges Only)  
SPI  
Radisson Hotel  
500 Padre Boulevard - 78597  
956/714-5511  
Registration Deadline: 3/27

July 2-3, 2002  
El Paso  
Hilton Camino Real  
101 South El Paso St. - 79901  
915/534-3007  
Registration Deadline: 6/5

### SPECIAL TOPICS FOR JUDGES

July 15-17, 2002  
San Antonio  
*Joint Ethics Conference*  
St. Anthony Hotel  
300 East Travis Street - 78205  
210/227-4392  
Registration Deadline: 6/17

### JUDGES & CLERKS FROM LOW VOLUME COURTS

May 20-21, 2002  
Denton  
Radisson  
2211 I-35 E. North - 76205  
940/565-8499  
Registration Deadline: 5/1

June 24-25, 2002  
Conroe  
Del Lago Conference Center & Resort  
600 Del Lago Boulevard - 77356  
936/582-6100  
Registration Deadline: 5/23

### NEW NON-ATTORNEY JUDGES AND CLERKS

July 21-25, 2002  
Austin  
Lakeway Inn  
101 Lakeway Drive - 78734  
512/261-6600  
Registration Deadline: 6/24

### CLERKS

April 3-4, 2002  
Amarillo  
Ambassador Hotel  
3100 I-40 West - 79102  
806/358-6161

April 25-26, 2002  
SPI  
Radisson Hotel  
500 Padre Boulevard - 78597  
956/714-5511  
Registration Deadline: 3/27

July 2-3, 2002  
El Paso  
Hilton Camino Real  
101 South El Paso St. - 79901  
915/534-3007  
Registration Deadline: 6/5

### PROSECUTORS

June 3-4, 2002  
Austin  
Hilton Airport  
9515 New Airport Drive - 78719  
512/385-6767  
Registration Deadline: 5/6

### COURT ADMINISTRATORS

June 3-4, 2002  
Austin  
Hilton Airport  
9515 New Airport Drive - 78719  
512/385-6767  
Registration Deadline: 5/6

## Level III Assessment Clinics

To be certified at Level III, clerks and court administrators must attend a three-day assessment clinic sponsored by TMCEC. The purpose of the program is to learn about and practice the court management and human resource skills that have been studied. Each program will have less than 30 clerks or court administrators and interaction will be emphasized. The program begins at 10:00 a.m. on Friday and concludes at 4:00 p.m. on Sunday. Night sessions are planned.

The new site and date for FY 2002 is:

June 14-16, 2002  
Denton  
Radisson Hotel Denton  
2211 I-35 North  
Denton, TX 76205  
940/565-8499

**Register By: May 16, 2002**

To register, complete the registration form on page 29 in this newsletter. Participation in the assessment clinic is one of several activities required to complete Level III. Participants need not have completed the exam or observation process before they attend the clinic, but it is necessary to have completed at least half of the recommended readings. There is a \$100 program fee that is refundable if the Center is notified in writing of cancellation two weeks prior to the clinic. Checks should be made payable to TMCEC and sent with the registration form.

**TEXAS MUNICIPAL COURTS EDUCATION CENTER  
2001-2002 REGISTRATION FORM**

Program Attending: \_\_\_\_\_ Program Dates: \_\_\_\_\_  
[city] [date]

Judge     Clerk     Court Administrator     Bailiff/Warrant Officer     Prosecutor

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

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_

Date Appointed/Elected/Hired: \_\_\_\_\_ Years Experience: \_\_\_\_\_ Male/Female: \_\_\_\_\_

**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/assessment clinics 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: \_\_\_\_\_ Mode of Transportation: \_\_\_\_\_  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                       Bailiff  
 Court Clerk                       Deputy Clerk                       Court Administrator  Warrant Officer  
 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 or must travel at least 30 minutes to the seminar site. Payment is required ONLY for the prosecutors' program, joint ethics conference, and assessment clinics; payment is due with registration form.

Participant Signature \_\_\_\_\_

Date \_\_\_\_\_

TMCEC • 1609 Shoal Creek Boulevard, Suite 302 • Austin, TX 78701 • FAX 512/435-6118



## Justice Information Systems

Database sharing, information-sharing, collaboration, cities working together, however you phrase it, sharing information within and between justice agencies is constructive. In a state as large as Texas, the use of information-sharing technology is essential.

The sharing of information technology is generally defined as the utilization of computers and software in a cooperative, harmonizing fashion to improve efficiency, to coordinate computerized functions, and to increase the production of information. The focus of information sharing through the electronic exchange of information is to ensure that justice personnel will make the best decisions. Making better decisions improves the fair administration of justice and results in the efficient use of public resources. Having the right information at the right place and at the right time results in better outcomes. The integration of information systems is what enables the delivery of that information.

The Dallas/Ft. Worth area has recently developed a regional information-sharing system, the Dallas County Juvenile Information System (JIS). The JIS system involves the electronic access and exchange of information throughout the Dallas/Ft. Worth justice community, including public safety agencies,

prosecutors, public defenders, courts, correction agencies, probation and parole departments, and schools involved in the juvenile justice process. According to the Dallas County JIS website, JIS was designed to provide:

A quick and cost-effective means of sharing and retrieving juvenile information, a method of getting juveniles into diversionary and treatment programs before they become habitual offenders, and an efficient process which maximizes time and resources of law enforcement agencies and judicial agencies.

The Dallas County Juvenile Information Systems allows participating agencies to access and share juvenile information through a secure centralized database. What does this mean? It means that all 40 agencies have access through the Internet to a juvenile's information when needed. Of the 40 agencies involved, eight are municipal courts, including: Carrollton, Dallas, Duncanville, Garland, Grand Prairie, Irving, Mesquite, and Richardson. These municipal courts are benefiting from the system because for each juvenile who is processed through the municipal court, the prosecutor can easily pull a status report on the juvenile, stating any citations, violations, etc. from all cities involved in the information system. Armed with more thorough information, the prosecutor can make a better, well-informed decision regarding the case.

Carrollton Municipal Court, for example, recently had a juvenile who had been issued a citation. A report

on the juvenile was pulled from the database. The report showed that this juvenile was wanted for questioning in a neighboring city. The neighboring city was contacted and given the juvenile's court date. The juvenile did appear for court, as did an officer from the neighboring city. Once the court processes were completed, the juvenile was taken into custody by the officer. The database lived up to its goal of information sharing and having an impact on juvenile crime in Dallas County.

How did this all start in Dallas County? Dallas area officials came together in 1998 by forming a committee—a committee aware of the growing juvenile population and the problems with processing juveniles. The committee began and continues to be led by Dallas County Commissioner Mike Cantrell. Funds for the program were made available from the Juvenile Accountability Incentive Block Grant (JAIBG), administered by the Criminal Justice Division of the Governor's Office. In this case, multiple agencies agreed to combine resources to fund the design, develop, deploy, and maintain the Juvenile Information System. The JIS Executive Committee is comprised of representatives from participating agencies ([www.jisinformation.dallascounty.org/excom.html](http://www.jisinformation.dallascounty.org/excom.html) lists the 2001 JIS Executive Committee members).

The implementation of the system was divided into two phases. During Phase I, the preliminary system design was developed and 19 more agencies were added. In Phase II, the committee worked closely with the

information system designers to maintain the developed system, complete Phase I and II training, add 35 new agencies to the system, expand the help desk, and add enhancements to the system. In the future, the JIS Executive Committee hopes to integrate the system into state and federal databases.

What is needed for successful integration? Of course, as with all projects, the successful incorporation of a shared information system requires careful planning and effective organization. Once a strategic planning committee or group is formed, the following steps should be taken:

- articulate a vision;
- identify the scope and objectives;
- recruit sponsors and participants;
- secure funding; and
- develop a detailed, comprehensive plan, which includes technical guidelines.

Many committees, that have completed integration, suggest the use of subcommittees to assist in developing and implementing the plan, such as a technology task force or a federal funding work group. Sample integration standards and planning models can be found on the Office of Justice Programs Information Technology Initiatives and Justice Integration home page: [www.it.ojp.gov](http://www.it.ojp.gov).

What problems will be encountered? As with all technology, this type of system is costly, securing enough funds to see the project through can be difficult. Technology itself can be the problem. Agencies may have very different computers, networks, or databases that may not be compatible. Many integrated systems are accessed over the Internet, making security of the data important. Lastly, it is necessary to build cooperation and collaboration between autonomous groups. Recruiting

diverse agencies and building trust can be complicated.

Beyond the application segment, it is important that the project is seen until the end, including looking at long-term funding, examining privacy, confidentiality and security issues, identifying the potential of changes in management in each of the organizations, and including program evaluation (both formative and summative) at all stages of the project.

If your area agencies are interested in forming an information-sharing information system, visit [www.jisinformation.dallascounty.org](http://www.jisinformation.dallascounty.org) or [www.it.ojp.gov](http://www.it.ojp.gov) for more information.

#### *Hate Crimes continued from page 27*

as a Class B misdemeanor with your district attorney. This option has not been attempted to my knowledge, but it could work if the district attorney's office is willing to prosecute the case.

In the case I have discussed in this article, there was no finding of racial motivation in the final analysis. The gracious African-American victim whose fence line was littered with banana peels routinely over a ten-month period of time by a Caucasian offender wielding a rebel flag was satisfied with the offender's plea, a lengthy deferred adjudication probation, a hefty special expense fee, and the watchful eye of the State.

<sup>1</sup> See Article 4.14, C.C.P., and Sec. 29.003, G.C.

<sup>2</sup> See Chapter 12 of the Texas Penal Code.

<sup>3</sup> See Sec. 28.03, P.C.

<sup>4</sup> Enacted in 1997 by the 75<sup>th</sup> Legislative Session.

<sup>5</sup> Texas Penal Code Section 12.22.

<sup>6</sup> It is unclear whether such a case could be transferable to county court for sentencing; however, to do so seems to be contrary to the jurisdictional designations as established in the code.

<sup>7</sup> Texas Code of Criminal Procedure Article 42.014.

## *Texas Municipal Courts Education Center*

### **MUNICIPAL WARRANT OFFICERS & BAILIFFS 12-Hour Seminar**

*May 13-14, 2002*

*San Angelo Holiday Inn  
441 Rio Concho Drive - 76903  
915/658-2828*

*Registration Deadline: 4/15*

*Sign up now!*

*Use the TMCEC registration form located  
on page 29 in this newsletter*

### **Correction Notice:**

Please note that the dates for the Low Volume Courts 12-hour program listed in the *TMCEC Academic Schedule* should reflect that the program will be held as follows:

#### **JUDGES & CLERKS FROM LOW VOLUME COURTS**

June 24-25, 2002

Conroe, Texas

Del Lago Conference Center &  
Resort

600 Del Lago Boulevard - 77356  
936/582-6100

Registration Deadline: 5/23

Access information pertaining to all TMCEC programs plus resource publications, news, links to helpful organizations, and much more useful information at the TMCEC web site.

**[www.tmcec.com](http://www.tmcec.com)**



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# Codebook Correction

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Last Fall, TMCEC sent a complimentary copy of the *Texas Vehicle and Criminal Handbook* to every municipal court judge and one to every municipal court in the state. The judge's version was loose-leaf in a binder, while the court's version was bound. TMCEC now has a set of tabs for judges to use with the binder. There is no cost to order these – just call TMCEC and request a set (800/252-3718). The tabs make it easy to locate the Transportation Code, Penal Code, Code of Criminal Procedure, A.B.C, Education Code, and so on.

If courts have found any errors in the Gould book, please contact Gould Publishers (800/717-7917) or TMCEC (800/252-3718). The only

one that has been brought to TMCEC's attention is shown below:

*Transportation Code Sec. 545.413, Safety belts; offense.*

*(a) A person commits an offense if the person:*

*(1) is at least 15 years of age;*

*(2) is riding in the front seat of a passenger vehicle while the vehicle is being operated;*

*(3) is occupying a seat that is equipped with a safety belt; and*

*(4) is not secured by a safety belt.*

*(b) A person commits an offense if the person:*

*(1) operates a passenger vehicle that is equipped with safety belts; and*

*(2) allows a child who is at least ~~five~~ years of age but younger than 17 years*

*of age or who is younger than ~~five~~ years of age and at least 36 inches in height to ride in the vehicle without requiring the child to be secured by a safety belt, provided the child is occupying a seat that is equipped with a safety belt.*

*(c) A passenger vehicle or a seat in a passenger vehicle is considered to be equipped with a safety belt if the vehicle is required under Section 547.601 to be equipped with safety belts.*

Additional copies can be ordered from Gould Publishers for \$22.95 for the softcover and \$26.95 for the looseleaf. For information on shipping costs and availability, contact Gould Publishers at [www.gouldlaw.com](http://www.gouldlaw.com) or 800/717-7917 or 1333 North US Highway 17-92, Longwood, FL 32750-3724.

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TEXAS MUNICIPAL COURTS  
EDUCATION CENTER  
1609 SHOAL CREEK BLVD., SUITE 302  
AUSTIN, TX 78701  
[www.tmcec.com](http://www.tmcec.com)

## TMCEC MISSION STATEMENT

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

**Change Service Requested**