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K2--WHAT'S THE BUZZ ABOUT?

by Cathy Riedel
Program Director, TMCEC

K2 is in the news and it's not because there is a breaking story about the world's second highest mountain in the remote south Asian Karakoram Range. No, the buzz is about K2, fake pot.

K2 is a brand name of a synthetic marijuana. It's a blend of "herbs and botanicals" that is treated with chemicals created in laboratories. The synthetic cannabinoids bind to the same neuroreceptors as THC, the psychoactive ingredient in marijuana. This fake marijuana is known by other brand names such as "Spice," "Spice Gold," "Blonde,"

or "Genie," and it has recently been getting attention as communities across Texas are becoming aware that there is a substance available for sale to anyone, without age restrictions or regulations of any kind, which can cause the same effects as marijuana. As the clamor for regulation mounts, public officials are recognizing the need to understand what this stuff is.

YK2?

Fake pot first appeared in Europe around 2004 and was sold under the brand name "Spice." The substance was marketed as incense or potpourri

and its ingestion mimicked the effects of marijuana. Soon, hospitals in Europe began to report instances where a person appeared with all of the symptoms of marijuana intoxication, but without a positive drug screen for marijuana. Initially, when Spice and similar products were tested, no illegal substances or active ingredients were detected, which could explain the "high" they produced in users. However, in 2008, the herbal blend was tested in Germany. It turned out that the actual herbs listed as the plant ingredients on the package did not show up in the testing; however, the testing did find

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GIVE THE DOG A BONE: THE CRIMINAL AND CIVIL SIDE OF ANIMAL CRUELTY

by Katie Tefft
Program Attorney, TMCEC

It is almost impossible to watch television anymore without seeing a heart-wrenching commercial showing faces of abused and abandoned furry friends that need your small monthly donation to survive. Animal rights activist groups, such as PETA (People for the Ethical Treatment of Animals) and the ASPCA (American Society for the Prevention of Cruelty to

Animals), have increased campaign efforts to stop animal abuse and raise awareness for this growing problem. Even Bob Barker tried to do his part by encouraging people to "Help control the pet population. Have your pets spayed or neutered."

Whether attributable to increased

Animal Cruelty continued pg 10

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AROUND THE STATE

NEW COURSES FOR MANDATORY JUDICIAL EDUCATION

TMCEC is offering three different courses (other than the regional judges programs) in the next four months that meet the requirements for mandatory judicial education for municipal judges: CoLoGo, ABA Traffic Court Seminar, and the Municipal Traffic Safety Initiatives Conference.

CoLoGo is cosponsored by TMCEC with the other judicial training entities, such as the Texas Association of Counties. This conference is open to judges and court support personnel from all types of courts. It is an excellent opportunity to learn about trends in technology, as well as network with judges and clerks from courts across Texas. This year the program is being held on January 25-27, 2011 in San Marcos at the Embassy Suites. The registration fee is now \$175 - payable to TMCEC. A brochure was sent to all municipal judges and municipal courts in December or may be accessed on the TMCEC website. (For judges and court support personnel)

TMCEC and the American Bar Association will co-sponsor the Traffic Court Seminar on February 16-18, 2011 at the Addison Crowne Plaza. It is a full two-day program starting at 1:00 pm on February 16, 2011 and ending at noon on February 18, 2011. Nationally recognized speakers will present a range of topics related to traffic courts, such as *Evidentiary Objections/Scientific Evidence, Non-Citizen Issues in Traffic Court, and Collateral Consequences of Criminal Convictions*. An interactive mock trial is a highlight of the program. The registration fee is \$50 – payable to TMCEC. Two nights at the hotel (if your court is located 30+ miles from the hotel) and breakfast (2) and lunch (1) are provided. (For judges only)

Also, in addition to the regional programs offered by TMCEC, TMCEC is again offering the Municipal Traffic Safety Initiatives Conference May 22-24, 2011 in San Antonio at the Omni Colonnade. Offered to judges and court support personnel, this program is funded by a TxDOT grant and focuses on traffic safety issues, including *Distracted Driving, Blood Draw Warrants, Young Drivers, and Masking for CDL Holders*. The registration fee is \$50 – payable to TMCEC. The Annual TMCEC/TxDOT Traffic Safety Awards will be recognized at this conference. (For judges and court support personnel)

Take a break from the regional judges programs and enjoy the change of pace offered by these programs that offer a more in-depth study of the issues for participants.

SAVE THE DATE!

The Annual Meeting of the Texas Municipal Courts Association has been scheduled for June 16-18, 2011 in Austin at the Omni Southpark. Watch the TMCA website for more details: www.txmca.com.



FROM THE GENERAL COUNSEL

by Ryan Kellus Turner

General Counsel & Director of Education, TMCEC

By the time you read this, the holiday season will have wound down. Speaking of winding down, have any of you with children in your lives noticed how much harder it is to get toys out of the packaging? If we cannot make toys in the United States of America, is there any chance we can at least install the twist ties used in the packaging? On behalf of every parent who struggled and spent what seemed like hours removing an absurd number of twist ties on Christmas Day, please China — enough already!!!!

One Last Bit from 2010: Ethics Opinion 599

Before we look forward to 2011, we have one more important matter to bring to your attention from the bygone year, 2010. In July, the Professional Ethics Committee of the State Bar of Texas issued *Ethics Opinion 599*. Question posed: Whether a lawyer who serves as bail bondsman for his client in a criminal prosecution may add to the court's form of bond a provision in which the client agrees that, if the client fails to appear in court, the attorney is authorized to enter a "no contest" plea that will result in a fine and may result in the issuance of a warrant for the client's arrest?

We have reproduced the opinion in this issue of *The Recorder*, see page 21. Please take the time to read it. Courts and attorneys should alter related practices in light of the opinion. The inherent conflict between an individual acting as a bail bondsman and simultaneously serving as an attorney for a client is not unique to municipal courts, let alone Texas. Read Dayla Pepi and Donna

Bloom's outstanding article in the *St. Mary's Law Journal*, Volume 37, Number 4 (2006), *Take the Money or Run: The Risky Business of Acting As Both Your Client's Lawyer and Bail Bondsmen*.

Opinion 599 consequently shines light into the crevices of Article 27.14 of Code of Criminal Procedure, governing how a plea of "guilty" or "nolo contendere" (i.e., "no contest") in misdemeanor cases may be submitted. Because defendants often hire attorneys to represent them in Class C misdemeanor cases so that they will not have to make a personal appearance in court, *Opinion 599* and Article 27.14 beg an answer to a fundamental question: In light of the bail bondsmen/attorney's conflict of interest, in absence of a communication from the defendant directly to a court, how can a court be reasonably assured that it is the defendant's intention to plea "no contest," and not that the bail bondsmen/attorney is entering such a plea in order to protect their own financial interests? The apparent answer is that, in such circumstances, no reasonable assurances can be made.

Regional Seminars in 2011: Coming to a City near You!

Having been with TMCEC 11 years, I have seen many incarnations of the Regional Judges and Clerks Programs. I can honestly tell you, if you have not already attended, that we have some great topics and presenters in the AY 2011 Regional Judges and Clerks Seminars.

The curriculum, agendas, and faculty are organized in the late summer

and delivered from October through June of each academic year. With the Tyler (October 2010) and Austin (November 2010) regional seminars in our rearview mirror, we have as of date seen 194 judges and 288 clerks. Using figures from last year, we estimate that we will see 2,400 judges and clerks in the next six months at the remaining regional conferences. Following a legislative session, the regional seminars tend to focus more on changes in statutory law. In academic years, like this year, a non-legislative year, they tend to include more of a garden variety of procedural and substantive law topics, presentations focusing on stock issues, and discussions of new subject matter. Unlike Special Topic Schools, where all of the content relates to a single subject matter, the regional programs tend to feature a smorgasbord of subjects.

I've picked out just a few of the topics and course descriptions from this year's regional seminars that I believe are going to make AY 2011 a fantastic and memorable learning experience for participants.

The Evolution of Traffic Safety (Regional Judges and Clerks Seminars) - Traffic safety has been an issue of concern from the beginning of the production of automobiles and their use on roadways. Recorded automobile fatalities can be traced back to as early as the 1960s. The 1930s saw the rise of advocacy for traffic safety with the promotion of seat belts and padded dashboards and the performance of the first crash tests. New advancements in vehicle safety features and traffic safety laws have continued to develop over the decades. Despite these technological

advances, about 40,000 people die every year in traffic-related fatalities in the United States. Although the fatality rates per vehicle registered and per vehicle distance travelled have steadily decreased since the advent of significant vehicle and driver regulation, the raw number of fatalities generally increases as a function of rising population and more vehicles on the road. This class will take a look back at important developments, examine current laws and equipment, and give students a glimpse of what is to come in the effort to increase traffic safety in the future.

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

1. Identify traffic laws and automobile accessories that enhance safety;
2. Discuss the effectiveness of those laws and safety features; and
3. Describe some coming advances in the future of vehicle and traffic safety.

Psychology of Hoarding (Regional Judges Seminars) - Compulsive hoarding is a mental disorder marked by an obsessive need to acquire and keep things, even if the items are worthless, hazardous, or unsanitary. The compulsive collection and ownership of pets is known as animal hoarding. Compulsive hoarding is thought to fall along the spectrum of obsessive-compulsive disorders. This session aims to increase the awareness of municipal judges of psychological issues that contribute to hoarding behavior. Hoarding relates to municipal judges and their jurisdiction in that hoarding behavior may play an underlying role in city ordinance and state law violations relating to nuisances and nuisance abatement.

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

1. Define "pathological hoarding";
2. List defining features of pathological hoarding;
3. Describe efforts to classify levels of hoarding; and
4. Identify subtypes of hoarding and related psychological disorders.

Application of Traffic Laws to Bicycles (Regional Judges Seminars) - Rising fuel costs, economic distress, and an increased focus on health and the environment have all played a part in the dramatic increase of bicycle commuters and recreational cyclists. Although a person operating a bicycle has the same rights and duties applicable to a driver operating a vehicle, bicycles are largely viewed by the public as the mere playthings of children, and not the common and viable methods of transportation they actually are. This thinking can lead to a dangerous environment where bicycles are often the forgotten (though rightful) users of our roads that need to be given the same consideration for safety as drivers while simultaneously holding them to the same obligation to follow the law. In this session, judges will learn how traffic laws apply to bicycles.

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

1. Define the applicability of rules of the road to bicycles;
2. Identify statutory rules and regulations specifically set forth for bicycles in Chapter 557 of the Transportation Code; and
3. Compare and contrast the rights and duties of drivers of bicycles vs. motor vehicle through the use of hypothetical situations.

Where Does the Money Go? (Regional Judges and Regional Clerks Seminars) - Municipal court personnel often face questions from city councils, mayors, and the media regarding the amount of money collected, but not retained, by the

municipal court. City officials are often unaware of the costs and fine money that are collected by courts, but must be sent on to the State. Judges and court personnel may also be unaware of when a judge may legally waive the payment of fines, fees, or costs owed by a defendant; thus, reducing the amount of money expected by the court, but not actually collected. This class will offer judges and court personnel a succinct explanation of what money is collected but not retained by the court/city. Participants will leave prepared to build responses to outside questions or claims that the court is mismanaging collections or sending too much money to the State.

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

1. Differentiate between "fines," "fees," and "costs" that are collected by municipal courts;
2. Identify costs of court that must be wholly or partially remitted to the State;
3. Identify offenses for which all or part of the fine must be remitted to the State;
4. Identify when judges may legally waive the payment of fines, fees, or costs by a defendant; and
5. Devise responses to the question of "where does the money go?"

Ethics & New Media (Regional Judges Seminars) - New developments in technology have changed the way we live and communicate. Modern technology allows us to communicate with the world in an instant and to socialize in new and exciting ways in the form of the email, blogging, Twitter, and Facebook. With these new advances, judges should be careful to continue to uphold the integrity of judiciary and to continually promote public confidence. This session will teach judges to be aware of new media platforms and how to use them

appropriately.

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

1. Identify the role of judge and court officers in promoting public confidence in the judicial system;
2. Summarize ethical rules and opinions that should govern online behavior;
3. Discuss examples of ethical traps in the new media;
4. Provide strategies for ethical use of modern technology including internet, blogs, tweets, and social media.

TMCEC: Embracing Technology (Step by Step)

TMCEC continues to strive in making innovations in the area of judicial branch and continuing legal education. While TMCEC has never adopted new technology simply to be “the cool kid at school,” TMCEC has not been reluctant to use instructional and information technologies if we are convinced that such technological advancements will assist us in our mission of providing high quality judicial education, technical assistance, and the necessary resource material to assist municipal judges, court support personnel, and prosecutors in obtaining and maintaining professional competence. TMCEC was the first Court of Criminal Appeals grantee to purchase and implement responder technology in judicial education. For nearly a decade we have hosted five active Listservs. Nearly 1,000 people in AY 10 participated in one of our live webinars. More and more people are beginning to register for events on-line.

In 2011, look for TMCEC to begin using social media such as Facebook, YouTube, and Twitter to give you new ways to find out about news, events, and information. Look for improvements in the look and utility

of our website (www.tmcec.com). Look for new opportunities to learn via our On-Line Learning Center (OLC) at online.tmcec.com.

While many of you may have already taken the plunge into social media, I understand the reluctance of those who have not. It is human nature that people move at different paces, on different paths. Nevertheless, paths often converge, fortified walls collapse, and practices that seem foreign commonly become second nature. (Remember the first time you used an ATM, “paid at the pump,” sent an e-mail, or purchased something over the internet?)

In an increasingly technological age, one of the challenges of all members of the judiciary is to understand technology as it relates to issues before the court. As I mentioned in the Case Law and Attorney General Opinion Update, featured in the last issue of *The Recorder*, the U.S. Supreme Court decision in *City of Ontario v. Quon*, No. 08-1332 (6/17/10), received a considerable amount of attention after oral arguments, perhaps undeservedly, because questions from members of the Court raised questions about their understanding of technology. Last week, however, I read that Justice Antonin Scalia, who is 74 years old, reads briefs submitted to the Court on his Apple iPad and Justice Elena Kagan, who is 50 years old, reads briefs on her Amazon Kindle. Both members of the Court have reportedly embraced technology rather than lug around reams of paper in an antiquated contraption called a “brief case.”

Are you ready to take a step forward? In 2011, will you take steps towards becoming more technologically savvy? More often than not, sooner or later, both professional credibility and longevity require keeping up with the times. Time is relentless. No one wants to end up like the Smith

Corona typewriter or Commodore 64 computer collecting dust in some attic. The Pony Express was once the standard bearer for fast, reliable, and efficient communication. Yet, the Pony Express announced its closure on October 26, 1861, 48 hours after the transcontinental telegraph reached Salt Lake City and connected Omaha, Nebraska and Sacramento, California. The transcontinental telegraph, similarly, became obsolete eight years later when it was replaced by a multi-line telegraph. Western Union discontinued its telegram and commercial message services on January 27, 2006 (nearly two years after the launch of Facebook and three months before the launch of Twitter). The announcement was made on its website. Employees of Western Union were informed by e-mail.

In the last two years, I have taken a few steps of my own. I am a self-admitted reluctant user of technology. I, for one, did not have a cell phone until 2001. My wife and I purchased iPhones after she “accidentally” washed my non-smart phone that I failed to take out of my gym pants before she placed them in the washing machine. I shunned Facebook until 2008 and reluctantly began using Twitter this past summer (you can follow me @rkellusturner). Personally, I find Facebook to be a great way to stay in contact with friends and family (and share baby pictures). Twitter, in contrast, is quickly becoming my favorite way to get breaking news on specific topics and share it with other people with whom I share common interests (e.g., lawyers and judges). Obviously, people use these technologies in different ways. It is easy, however, to see why both Facebook and Twitter are becoming commonly used by entities, ranging from neighborhood associations to national governments.

I truly understand the criticisms of those who dislike these new

technologies and how they appear to be changing society. I also believe that many of such gripes have more to do with the users of such technologies than the technologies themselves. You can assail the advent of almost everything devised or discovered by human beings dating back to the first caveman who got burned playing with fire (i.e., the historic precursor to texting while driving).

Happy New Year!



K2 continued from pg 1

that the substance contained at least two different designer drugs known as synthetic cannabinoids. The active substance found in Spice by the German researchers was CP 47,497 (or cannabicyclohexanol) and it was outlawed along with its relatives dimethylhexyl, dimethyloctyl, and dimethylnonyl homologues, including JWH-018.¹ Four weeks after the German prohibition of these particular compounds, the compounds were replaced with a new compound, JWH-073. Very early on, prohibition of synthetic pot was proving to be a challenge. Still, as Europe attempted to control the distribution of synthetic pot, the substance remained legal in the United States.

Where K2?

So where did this fake pot come from? It turns out that this synthetic cannabinoids was invented by an organic chemistry researcher, Dr. John W. Huffman, at South Carolina's Clemson University. Beginning in 1984, Huffman and his team of researchers began developing cannabinoid compounds to aid in medical research. Over the course of 20 years, Huffman and his team developed 450 synthetic cannabinoid compounds, which were used to identify the effects of cannabinoid receptors in the brain and other

organs.² He found that the synthetic cannabinoids, like THC, turned on the cannabinoid receptors found on many cells in the body, particularly in the brain. It was these substances developed in the Clemson University laboratory which mysteriously began appearing in Europe in the products such as Spice and K2. Several of the active compounds, such as JWH-018 and JWH-073, are named for Dr. John W. Huffman. Apparently, Huffman is not thrilled that his name and research is associated with the growing widespread abuse of his invention:

I figured once it got started in Germany it was going to spread. I'm concerned that it could hurt people, Huffman said. To think this was something that was more or less inevitable. It bothers me that people are so stupid as to use this stuff... If you go around paying \$40 for a packet of leaves that contains who knows what and smoke it, you are not a very responsible person.

Huffman continued, "It's like playing Russian roulette. You don't know what it's going to do to you." "You're a potential winner of a Darwin award," referring to the tongue-in-cheek awards given to people who "do a service to humanity by removing themselves from the gene pool."³

What is Known About the Effects of K2?

There have been no official studies on the effects of synthetic cannabinoids in humans. According to Dr. Huffman, as told to WebMd, the compounds are similar to THC, but no one knows how these new compounds act in the human body. Anecdotal reports say they stick around in the body longer than THC. From a chemist's perspective, K2 has an affinity for the cannabinoid brain receptor (CB1) that is about 10 times greater than THC.⁴ According to the

Texas Poison Center, there has been a dramatic increase in telephone calls concerning reports of chest pains and increased heart rates due to the use of K2. In 2009, there were fewer than a dozen calls about the substance, but in 2010 the number was up to nearly 250.⁵ The American Association of Poison Control Centers has reported more than 2,000 calls to the Center in 2010.⁶

As alarming stories filter in from medical and other sources around the country, calls for prohibition of the substance are growing. In this call for prohibition, another substance is being lumped in with and confused with K2. It too is a botanical product, which until recently has been legally available in the United States, and it is often included in local ordinances banning K2. The substance is a natural hallucinogen called salvia divinorum.

K2 vs. Salvia Divinorum

Salvia divinorum, also known as "Ska Maria Pastora" or "Seer's Sage," is a plant native to Oaxaca, Mexico. The name is derived from the genus name "Salvia" or "Sage" and "divinorum" because of the plant's traditional use in divination and healing. Historically, the plant was used in religious ceremonies by Mazatec⁷ shamans to facilitate visionary states of consciousness during spiritual healing sessions. The shamans saw the plant as an incarnation of the Virgin Mary. The plant was first documented in print in 1939 by Jean Basset Johnson, but it took years before botanists could identify the plant due to Mazatec secrecy about growing sites. It was discovered that the psychoactive component of the plant is salvinorin A, which is a potent "k-opioid and D2 receptor agonist."⁸ This plant is legal in most countries and, as of this writing, is not prohibited by federal law. Alarm is spreading due to its popularity and use with young teens and its

glorification in YouTube videos. In fact, just recently, Miley Cyrus, the teenage star of “Hannah Montana,” created a scandal when she appeared in a YouTube video purportedly smoking salvia the week after her 18th birthday.

The effects of ingestion of salvia divinorum are better documented and different than those of synthetic pot. Research shows that the effects of salvia appear almost immediately and last about eight minutes. The effects include speech and coordination loss. According to the National Survey on Drug Use and Health for 2006, it was estimated that about 1.8 million persons aged 12 or older had used salvia in their lifetime and 750,000 had done so that year. By 2007, that number had risen to one million US users. Although these statistics are dated, it is reasonable to assume that the number of users has increased significantly in the last three years.

While salvia divinorum is an entirely different substance than K2 and other synthetic marijuana substitutes, the two substances are inextricably connected in ordinances banning their use, sale, or possession throughout the State of Texas, and the distinction between the two is often confused. For example, a story from the Bryan-College Station newspaper on August 27, 2010, reports that the College Station City Council voted to ban a “pair of marijuana-like substances.”⁹

The State of the Law

Kansas became the first state to outlaw K2 and its kin in March 2010. Several states followed suit, including Missouri, Alabama, Illinois, Georgia, Michigan, and Louisiana. Legislation is pending in several other states.

Neither K2 nor salvia divinorum is currently prohibited under Texas state law; however, bills have been pre-filed in this legislative session calling for the prohibition of both

substances. On November 8, 2010, State Representative Aaron Pena from Edinburg filed HB 49 which seeks to make the possession of certain synthetic derivatives of marijuana to be a Penalty group 2 controlled substance.¹⁰ Also, State Senator Florence Shapiro from Plano has announced that she plans to file a bill to outlaw fake pot.

Past Efforts

In past legislative sessions there have been attempts to ban salvia divinorum. In 2007, State Representative Charles Anderson from Waco, introduced a House bill to regulate salvia divinorum and its concentrate by penalizing those who possess it with at least a state jail felony. Anderson’s bill died in committee because of a disagreement about the penalty. Two more bills with lesser penalties that were introduced during the same session also died.

Another salvia bill was introduced in 2009 by State Senator Craig Estes from Wichita Falls. This proposed bill made the sale of salvia to individuals under 18 a Class C misdemeanor. That bill failed “during the pile-up of bills as lawmakers in the House talked to death the controversial voter ID bill in the final days of the legislative session.”¹¹ The same salvia bill will be introduced during the upcoming session, according to Representative Anderson.

Current Efforts

One of the challenges that lawmakers will face in drafting a bill to ban synthetic marijuana is regulating the evolving substitution of chemical compounds that mimic real marijuana’s effects. In other words, the manufacturers can just change the chemical recipe to avoid the statutory prohibitions. Currently, five versions of synthetic THC have been identified in K2. These are created by slightly

varying the chemical structure of real THC. “There are already a number of different formulas — all a chemist has to do is tweak one molecule and you have a new formula which is not covered by the law,” says Jane Maxwell, a senior research scientist at the University of Texas.

“I have people writing me e-mails and sending me letters from all over the state saying that this is a problem in their communities,” says State Senator Florence Shapiro from Plano. Shapiro is working with scientists and drug policy experts to draft a bill to ban K2 in this session.¹²

Local Enforcement

Although, for the time being, there is no statewide ban in Texas, many cities have voted to ban K2 and salvia. In July, the City of Allen voted to prohibit both the sale and possession of the substances. In August, College Station and Bryan instituted bans on K2 and salvia. Many cities have followed suit: Jasper, Plano, Dallas, and Tyler, to name a few, and more city councils are voting on the ban weekly. The prohibitions outlined in the ordinances vary across the state. Generally, they fall into two categories: one, an outright ban on both substances, and two, ordinances that prohibit the sale or possession of the substances for persons under 21 years of age. For example, the Sulphur Springs ordinance prohibits the sale or delivery of these “smoking materials” to anyone below age 21 and prohibits possession of the restricted materials by anyone below age 21 within the city limits. Sale of the restricted materials is also banned within 1,500 feet of certain localities such as churches, schools, and day care centers.¹³ In Cedar Park, pursuant to the ordinance passed in September, it is unlawful for any person to use, possess, purchase, barter, give, publicly display, sell, or offer for sale either K2 or salvia, irrespective of age or location in the city.¹⁴

Fines for these new offenses vary widely. In Lewisville, the fine for use or possession of K2 is \$500, while the fine for selling is \$1,000.¹⁵ In Cedar Park, the ordinance does not distinguish between use and possession and violation of the ordinance is a fine up to \$2,000.

With the increasing public awareness and concern, these local ordinances are spreading like bedbugs, despite a persuasive argument that general law cities do not have the authority delegated to them by the State to prohibit the possession of these substances that are not outlawed by the State. The preemption arguments may soon be academic given the upcoming legislative session in Austin.

Enter the Feds

The flurry of legislation across the nation in states and cities has not gone unnoticed by the Feds. In a November 23, 2010 press release, the Drug Enforcement Administration (DEA) announced that it was using its emergency scheduling authority to temporarily control five chemicals used to make “fake pot” products. The Notice of Intent to Temporarily Control was published in the *Federal Register* on November 23 announcing that a final rule would be published after 30 days making it illegal to possess or sell the chemicals for at least 12 months.¹⁶ The chemicals are listed as Schedule I substances, the most restrictive category reserved for unsafe highly abused substances with no medical usage, making it more restrictive than cocaine. The Final Rule to Temporarily Control these chemicals will be published in the *Federal Register* and the ban will be law for at least 12 months.

What does this mean for Texas? For one thing, it will be a federal offense to possess K2, a Schedule I substance. Punishment according to federal sentencing guidelines is

a complicated matter and depends on the amount of the contraband possessed, along with other factors, such as intent to distribute, etc. Suffice it to say, possession of K2 is not a fine-only offense under federal law.

What does this do to the legitimacy of local ordinances? For now, K2 is not listed as a controlled substance in the Texas Controlled Substances Act, Chapter 481 of the Health and Safety Code. However, there is language in the Act that states if a substance is designated as a controlled substance under federal law, then the Commissioner of Public Health will “similarly control” the substance.¹⁷ Under Section 481.033(g), unless the Commissioner successfully objects to the placement of K2 and its buddies on the schedule, K2 will become a Schedule I controlled substance in Texas months before the Texas Legislature will enact a new law.

What does this mean for cities that have passed ordinances regulating K2? It is, of course, unlikely that municipal courts will then have jurisdiction of the offenses related to the possession of K2, unless it is perhaps possession of narcotic paraphernalia. Cities that have not yet banned these substances may want to “wait for the smoke to clear” before enacting a related criminal ordinance.

Enforcement

Whether it be under the temporary measures imposed by the DEA, the Texas Controlled Substances Act, or local ordinance, the days of these substances being openly displayed and sold in head shops or smoke shops appear numbered. As discussed above, it has been challenging enough just to define what constitutes the prohibited substance. Conscientious enforcement of the law will similarly present genuine challenges. K2 and like concoctions are generally marketed in small plastic packages

and sold by the gram. Manufacturers of the products work industriously to stay ahead of law enforcement. For example, the “official” K2 website, www.k2incense.org, hails two new K2 products “NOT COVERED BY ANY BANS!”: K2Sex and K2Sky.

CSI: Municipal Court

If an officer arrests someone in possession of a sealed baggie labeled “K2 incense,” is that proof beyond a reasonable doubt that the offense of possession of the banned substance has been committed? There is no regulation and no control over the manufacture of K2 and the compounds are constantly changing. In the case of the person holding the sealed labeled K2 baggie, there is certainly a strong argument for attempted possession of a controlled substance, but without submitting the substance to laboratory testing, there is no evidence that the bag of herbs or clippings contains prohibited synthetic cannabinoid compounds. Are Texas cities with these prohibition ordinances prepared to absorb the laboratory costs necessary to prove illegal content?

In Conclusion

Judges, prosecutors, law enforcement, and concerned citizens have a responsibility to promote and maintain the health and safety of our fellow citizens. New threats constantly arise as others diminish. (Take Four Loko, the caffeinated alcoholic beverage, for example.)

There are dangers and menaces to our children everywhere. Scientists and organic chemists have made great discoveries in the laboratory. Unfortunately, however, it appears that maturity and common sense have not been reproduced in a test tube yet. For that matter, neither has the law.

¹ [http://en.wikipedia.org/wiki/K2_\(drug\)](http://en.wikipedia.org/wiki/K2_(drug)).

² [http://en.wikipedia.org/wiki/K2_\(drug\)](http://en.wikipedia.org/wiki/K2_(drug));

<http://en.wikipedia.org/wiki/JWH-018>.

³ Jeanna Bryner, "Fake Weed, Real Drug: K2 Causing Hallucinations in Teens" available at <http://www.livescience.com/health/fake-marijuana-k2-hallucinations-100303.html>.

⁴ Daniel DeNoon, "FAQ: K2, Spice Gold and Herbal 'Incense': Legal Herbal Products Laced with Designer Drugs: Not your Father's Marijuana," available at www.webmd.com/mental-health/news/K2-spice-gold-herbal-incense.

⁵ Julie Chang, "Lawmakers Want to Ban Synthetic Marijuana" available at <http://www.texastribune.org/texas-state-agencies/department-of-state-health-services/lawmakers-want-to-ban-synthetic-marijuana/>.

⁶ Jessica Wehrman, "Fake Marijuana Spurs More than 2,000 Calls to U.S. Poison Centers This Year Alone" available at <http://www.aapcc.org/dnn/Portals/0/Nov16k2release.pdf>.

⁷ The Mazatec are an indigenous people who inhabit an area of the State of Oaxaca in southern Mexico, close to the border with Puebla and Veracruz. See <http://en.wikipedia.org/wiki/Mazatec>.

⁸ See <http://en.wikipedia.org/wiki/Salvia>

divinorum.

⁹ Cassie Smith, "CS Council Bans K2, Salvia," *The Eagle*, August 27, 2010 available at <http://www.theeagle.com/PrinterFriendly/CS-council-bans-K2-salvia>.

¹⁰ <http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=82R&Bill=HB49>.

¹¹ Julie Chang, "Lawmakers Want to Ban Synthetic Marijuana," available at <http://www.texastribune.org/texas-state-agencies/department-of-state-health-services/lawmakers-want-to-ban-synthetic-marijuana/>.

¹² *Id.*

¹³ Sulphur Springs Code of Ordinances, Sections 4-6 through 4-12.

¹⁴ City of Cedar Park Code of Ordinances, Article 8.09.

¹⁵ City of Lewisville Code of Ordinances, Ordinance No. 3807-09-2010.

¹⁶ See www.justice.gov/dea/pubs/states/newsrel/2010/la112310.html.

¹⁷ Section 481.033(g) of the Health and Safety Code provides:

Except as otherwise provided by this subsection, if a substance is designated, rescheduled, or deleted as a controlled

substance under federal law and notice of that fact is given to the commissioner, the commissioner similarly shall control the substance under this chapter. After the expiration of a 30-day period beginning on the day after the date of publication in the *Federal Register* of a final order designating a substance as a controlled substance or re-scheduling or deleting a substance, the commissioner similarly shall designate, reschedule, or delete the substance, unless the commissioner objects during the period. If the commissioner objects, the commissioner shall publish the reasons for the objection and give all interested parties an opportunity to be heard. At the conclusion of the hearing, the commissioner shall publish a decision, which is final unless altered by statute. On publication of an objection by the commissioner, control as to that particular substance under this chapter is stayed until the commissioner publishes the commissioner's decision.



Stop and Take Notice

The Texas Municipal Courts Association Public Outreach Committee along with the Texas Municipal Courts Education Center would like to encourage you to go out in your community and address the need for traffic safety.

Please take the time to look at the TMCEC website (www.tmcec.com) and use the materials provided on the Municipal Traffic Safety Initiatives and Driving on the Right Side of the Road webpages to help your community understand the importance of safe driving. The TMCA Public Outreach Committee CHALLENGES all municipal court personnel to speak at schools, senior centers, and civic groups to help promote the court and importance of traffic safety.

We also encourage you to sign up for the speakers' bureau, which will help locate speakers for schools and civic groups requesting this type of outreach. Please fax your information to TMCEC at 512.435.6118 or email robinson@tmcec.com

Add Me to the Speakers' Bureau

Name: _____
Court: _____
Tel.# : _____
Email: _____



media attention, the economic recession, or just an angrier human race, courts across the United States have seen an increase over the past several years in the number of cases involving cruelty to animals. The most notorious: Michael Vick. Now the star quarterback of the Philadelphia Eagles and self-proclaimed motivational speaker who travels the country talking to youth about his mistakes, Americans remember Michael Vick as a convicted felon who served time in a federal prison for running a dog-fighting ring.

Animal abuse is a crime.

Currently, all 50 states have laws making cruelty to animals a crime, though the severity of the punishment differs greatly. (See the chart on the next page.) Critics of animal laws argue that time and resources are better suited to prosecute violent crimes or crimes in which the victim is human. Animal law scholars and animal rights advocates believe that animal abuse is often a predictor of future violent crime and consider animal abuse a “gateway” behavior.

As a child, Ted Bundy witnessed his grandfather’s brutality towards animals. He, in turn, tortured and killed his own pets. He grew up to be a serial rapist and admitted to killing at least 30 women.¹ Numerous other serial killers (i.e., Jeffrey Dahmer, the “Boston Strangler,” the “BTK Killer”) and many of the notorious school shooters (e.g., Eric Harris and Dylan Klebold, the Columbine shooters) were known to or have admitted to abusing animals as a child. In fact, the FBI considers past animal abuse when profiling serial killers; and child protection and social service agencies, mental health professionals, and educators look at animal abuse as a red flag to identify

other violent behaviors and mental disorders.²

Recent studies have linked animal abuse to domestic, elderly, and child abuse. Oftentimes, the abused or a child witness to the abuse will take out their rage and frustrations on animals in the home, only further perpetuating the cycle of violence.³ However, regardless of the rise in literature and studies examining the link between violence against animals and violence against humans, crimes against animals often go unreported and underprosecuted.⁴ Animal rights advocates argue that the punishment for those few cases that do result in criminal conviction does not deter future abuse, and does not carry a stigma as do convictions for sex offenses. This belief led Suffolk County, New York to create the first animal abuse registry this past fall. Operating much like the sex offender registries already in place nationwide, the animal abuse registry will require people convicted of cruelty to animals to register or face fines and/or incarceration. The Suffolk County registry will be available to the public online, and supporters of the bill are hoping to introduce additional legislation that will ban registrants from buying or adopting any more pets from shelters, pet shops, or breeders.⁵ Other states, including California, Rhode Island, Tennessee, and even Texas, are contemplating similar legislation.

The Criminal Offense: The Penal Code

The Texas Penal Code contains four provisions criminalizing animal cruelty, including Section 42.092: Cruelty to Nonlivestock Animals (meaning any domesticated living creature other than uncaptured wild living creatures or livestock).⁶ Though not handled in municipal court, municipal judges should be familiar with the elements of these crimes in their role as magistrates.

Section 42.092 creates an offense if a person intentionally, knowingly, or recklessly:

- Fails unreasonably to provide necessary food, water, care, or shelter for an animal in the person’s custody;
- Abandons unreasonably an animal in the person’s custody;
- Transports or confines an animal in a cruel manner;
- Without the owner’s effective consent, causes bodily injury to an animal; or
- Seriously overworks an animal.⁷

Conviction of the offense committed in any of the above ways is a Class A misdemeanor, punishable by a fine not to exceed \$4,000 and/or confinement in jail for up to one year. The offense can be enhanced to a state jail felony if the defendant has been previously convicted twice of a Cruelty to Livestock and/or Nonlivestock Animals offense.⁸

If the person intentionally, knowingly, or recklessly:

- Tortures an animal or in a cruel manner kills or causes serious bodily injury to an animal;
- Without the owner’s effective consent, kills, administers poison to, or causes serious bodily injury to an animal;
- Causes one animal to fight with another animal, if either animal is not a dog (think cockfighting); or
- Uses a live animal as a lure in dog race training or in dog coursing on a racetrack,⁹

the offense is punishable on conviction as a state jail felony, carrying a sentence of 180 days to two years confinement in a state jail and possible fine of up to \$10,000. It can be enhanced to a felony of the third degree if the defendant has two prior convictions of Cruelty

U.S. CRUELTY LAWS FELONY VS. MISDEMEANOR

Fields used in this chart:

- Felony:** Whether there are felony provisions for animal cruelty in the specified state.
- Year:** Year the felony law was enacted, if applicable.
- Max. Jail:** Maximum amount of jail time allowable by law under the felony provisions.
- Max. Fine:** Maximum fine allowable by law.
- Counseling:** Whether state law allows mandatory counseling to be ordered as part of sentencing.
- Ban:** Whether state law allows for a temporary or permanent ban on animal ownership as part of sentencing.
- PPO:** Whether state law can include animals in protection orders (pet protective orders).

STATE	FELONY	YEAR	MAX. JAIL	MAX. FINE	COUNSELING	BAN	PPO
Alabama	✓	2000	10 years	\$5,000	✗	✗	✗
Alaska	✓		1 years	\$10,000	✓	✗	✗
Arizona	✓	1999	1 years	\$150,000	✗	✗	✗
Arkansas	✓		1 years	\$1,000	✓	✗	✗
California	✓	1988	3 years	\$20,000	✓	✗	✓
Colorado	✓	2002	6 years	\$500,000	✓	✓	✓
Connecticut	✓	1996	5 years	\$5,000	✓	✗	✓
Delaware	✓	1994	3 years	\$5,000	✗	✓	✗
D.C.	✓	2001	5 years	\$25,000	✗	✗	✗
Florida	✓	1989	5 years	\$10,000	✓	✗	✗
Georgia	✓	2000	5 years	\$15,000	✓	✗	✗
Hawaii	✓	2007	5 years	\$10,000	✗	✗	✗
Idaho	✗		1 years	\$9,000	✗	✗	✗
Illinois	✓	1999	5 years	\$50,000	✓	✗	✗
Indiana	✓	1998	3 years	\$10,000	✓	✗	✗
Iowa	✓	2000	5 years	\$75,000	✓	✗	✗
Kansas	✓	2006	1 years	\$5,000	✓	✗	✗
Kentucky	✓	2003	5 years	\$10,000	✗	✗	✗
Louisiana	✓	1995	10 years	\$25,000	✓	✗	✗
Maine	✓	2001	5 years	\$10,000	✓	✓	✓
Maryland	✓	2001	3 years	\$5,000	✓	✓	✗
Massachusetts	✓	1804	5 years	\$2,500	✗	✗	✗
Michigan	✓	1931	4 years	\$5,000	✓	✓	✗

Minnesota	✓	2001	4 years	\$10,000	✓	✓	✓	✗
Mississippi	✗		6 months	\$1,000	✗	✗	✗	✗
Missouri	✓	1994	5 years	\$5,000	✗	✗	✗	✗
Montana	✓	1993	2 years	\$2,500	✗	✓	✗	✗
Nebraska	✓	2002	5 years	\$10,000	✗	✗	✗	✗
Nevada	✓	1999	5 years	\$10,000	✓	✗	✗	✓
New Hampshire	✓	1994	7 years	\$4,000	✗	✓	✗	✗
New Jersey	✓	2001	5 years	\$15,000	✓	✗	✗	✗
New Mexico	✓	1999	18 months	\$5,000	✓	✗	✗	✗
New York	✓	1999	2 years	\$5,000	✓	✓	✓	✓
North Carolina	✓	1998	6 months	\$1,000	✗	✗	✗	✗
North Dakota	✗		1 years	\$2,000	✗	✗	✗	✗
Ohio	✓	2002	1 years	\$2,000	✓	✗	✗	✗
Oklahoma	✓	1887	5 years	\$5,000	✓	✗	✗	✗
Oregon	✓	1995	5 years	\$100,000	✓	✓	✗	✗
Pennsylvania	✓	1995	7 years	\$15,000	✓	✓	✗	✗
Rhode Island	✓	1896	2 years	\$1,000	✓	✓	✗	✗
South Carolina	✓	2000	5 years	\$5,000	✓	✗	✗	✗
South Dakota	✗		1 years	\$1,000	✗	✗	✗	✗
Tennessee	✓	2001	9 months		✓	✓	✓	✓
Texas	✓	1997	2 years	\$10,000	✓	✓	✗	✗
Utah	✓		1 years	\$5,000	✓	✓	✗	✗
Vermont	✓	1998	5 years	\$7,500	✓	✓	✓	✓
Virginia	✓	1999	5 years	\$2,500	✓	✓	✓	✗
Washington	✓	1994	5 years	\$10,000	✓	✓	✗	✗
West Virginia	✓	2003	5 years	\$5,000	✓	✓	✓	✗
Wisconsin	✓	1986	5 years	\$10,000	✓	✗	✗	✗
Wyoming	✓	2003	2 years	\$5,000	✓	✗	✓	✗

Chart reprinted from Pet-Abuse.com and the Animal Abuse Registry Database Administration System, available at: http://www.pet-abuse.com/pages/cruelty_laws.php#ixzz1AD2ZUjU. TMCEC does not warrant the accuracy of the information.

Editor's notes: Section 54.0407 of the Family Code provides that a juvenile court shall order a child found to have engaged in delinquent conduct constituting cruelty to livestock or cruelty to nonlivestock. Animals to participate in psychological counseling. Section 1702.283 of the Occupations Code prohibits a person convicted of cruelty to nonlivestock animals from obtaining a license for a guard dog company or an endorsement as a dog trainer. The person also may not work with dogs as a security officer.

to Livestock and/or Nonlivestock Animals.¹⁰

There are several defenses built into the statute: the defendant had a reasonable fear of bodily injury to himself or another; was engaged in scientific research; was acting in the scope of employment as a public servant; or caused the death, serious bodily injury, or bodily injury upon discovery of the animal's destruction to the defendant's property or crops.¹¹ It is interesting to note that the statute does not create a civil cause of action in tort for damages or enforcement of this section.¹²

Animal cruelty cases usually begin with an investigation by animal control or peace officers. The process for a criminal case alleging animal cruelty will follow the procedures in place for any other Class A misdemeanor or state jail felony offense: the indictment or information for Class A misdemeanor conduct must be presented within two years of the date of the cruel treatment,¹³ and the indictment for state jail felony conduct must be presented within three years of the date of the cruel treatment.¹⁴ The purpose behind the criminal statute is to punish the actor. It is a criminal matter; there is a defendant. But the animal or animals – the real victim(s) in the case – are merely evidence. How can law enforcement protect the animal?

The Civil Side: The Health and Safety Code

The Texas Legislature has given municipal and justice courts limited civil jurisdiction in cases involving cruelly-treated animals and dangerous dogs.¹⁵ This article is the first of two parts; part two, to be printed in a later issue of the *The Recorder*, will address dogs that are a danger to humans, as this article will be limited to addressing humans that are a danger to animals.

The Legislature has created two avenues for the State in protecting animals from cruel treatment: criminal prosecution under the Penal Code and the civil remedy contained in the Health and Safety Code.¹⁶ Although statistics on the exact number of these cases just do not exist, media coverage has shed some light on the abundance and intensity of these cruelly-treated animal cases.¹⁷

According to the Texas Academy of Animal Control Officers (TAACO), 95 percent of animal cruelty cases **stop** at the municipal or justice court level. Put another way, only five percent of animal cruelty cases actually progress to criminal prosecution. This means the overwhelming majority of cruelly-treated animals are protected by municipal and justice courts – and that leads to the biggest difference between the criminal and civil avenues: while the criminal avenue is punitive and exists to punish the actor by imposing a fine or imprisonment, the intent of the cruelly-treated animal provisions in the Health and Safety Code is civil and remedial¹⁸ and aims to protect the animal.

The laws governing cruelly-treated animal hearings in municipal and justice courts are found in just six, rather succinct, statutes in the Health and Safety Code, Subchapter B of Chapter 821. The Health and Safety Code defines cruelly-treated animals as those that are tortured; seriously overworked; unreasonably abandoned; unreasonably deprived of necessary food, care, or shelter; cruelly confined; or caused to fight with another animal.¹⁹ Though not word for word identical, this definition parallels the different ways to commit the criminal offense of animal cruelty found in the Penal Code.

How do these cases come to be heard in municipal (or justice) court and

how are they handled?

The Warrant

Section 821.022 provides that “if a peace officer or an [animal control officer] in a county or municipality has reason to believe that an animal has been or is being cruelly treated, the officer may apply to a justice court or magistrate in the county or to a municipal court in the municipality in which the animal is located for a warrant to seize the animal.” That application should include a probable cause affidavit, whereas upon the showing of probable cause that the animal has been or is being cruelly treated, the court or magistrate **shall** issue a seizure warrant.

The judge or magistrate shall also set the case for a hearing to be held in the appropriate justice or municipal court to determine whether the animal has been cruelly treated. That hearing must be scheduled within **10 calendar days** of the date the seizure warrant is issued. The peace officer or animal control officer executing the seizure warrant shall then impound the animal (humanely, of course) and give notice to the animal's owner of the time and place of the hearing. It is easiest to include that notice in the seizure warrant itself.

Although, at this stage, only the law enforcement (or animal control) officer and the judge are involved, the clerk may be called to docket the hearing. Clerks: note that this is **not** a criminal case. There is no defendant in the matter, only a respondent. As a civil proceeding, the case should be styled as “In the Matter Of [the animal(s) at issue]” or “In Re [the animal(s)]” and not as “State vs. [owner or animals].”

It is also a good idea for whoever will be representing the city to be involved as well, as it is important to remember the 10-calendar-day deadline. Note that under this civil process, days

are computed by calendar days, and pursuant to the Rules of Civil Procedure. This 10-day “deadline” essentially limits the amount of time the city has to build their case. Prosecutors or city attorneys who will be representing the city would be best to work with law enforcement or animal control before applying for the seizure warrant.

The statutory requirements in Section 821.022 raise some unanswered questions.

First, in an ideal case, the identity of the animal’s owner would be clear, and the owner would claim ownership. But what happens when the purported owner denies ownership or the owner cannot be located? To whom should the officer give the required notice? There are no statutory answers as to how to proceed if the owner cannot be located. Some cities proceed with the seizure under city ordinances allowing animal control to impound a stray or at-large animal. However, due process requires that before a person is deprived of property (and animals are still considered property under the law), they must be afforded notice and an opportunity to be heard. Without knowing that notice was given, a court should be hesitant to proceed to hearing. It is clear that until the city is operating under these procedures outlined in Chapter 821, the municipal court should not be involved.

Second, what if the animal is already in the city’s custody? Unlike other civil proceedings in municipal court (i.e., dangerous dogs) where the process of getting the animal seized is quite circular, there is no process for getting a cruelly-treated animal case into municipal court without first going through the seizure process. It makes sense to assume that if the animal(s) were already seized, the party with custody of the animal could simply contact the court to set

a hearing date and have notice served on the owner. It also seems simple enough that the court just issue the seizure order to be given to the owners, though the physical seizure has already occurred. Either way, it is important that the owner receive notice before the case ever proceeds to hearing.²⁰

The Hearing

Assuming that the seizure warrant is properly issued, the animals are properly seized, and the owners are properly notified of the hearing, what should the court expect?

The hearing is to be held in the appropriate municipal or justice court within 10 days of the date the seizure warrant was signed. Again, this means the city has no more than 10 days to prepare for the hearing. The actual hearing is governed by Section 821.023, though the only guidance as to what occurs during the hearing is a position stating that any interested party is entitled to present evidence at the hearing.²¹ This would most certainly include the animal’s owner, should include the city attorney, peace officer, or animal control officer bringing the case, and could possibly include anyone else. Without more specific guidance, and as the person in control of the court, it is up to the judge to determine who the interested parties are and who may present evidence. As this is a civil matter, there is no requirement that the owner be present at the hearing; the only requirement is that the owner be provided notice of the hearing.

Many of us could recognize when a dog or cat has been cruelly treated in cases of neglect, starvation, or active physical abuse. But how many laypersons – how many of you – could recognize body condition scores for an equine or bovine? How many people really know what a chinchilla or coatimundi should weigh? As this is an area not of the

layperson’s expertise, these cases will many times require expert testimony from veterinarians or zoologists.

There is no way to predict the time a hearing like this will take. Factors will include the number of witnesses, the number of animals at issue, whether the owner appears, or how the judge answers the questions addressed in the next few paragraphs. It is safe to assume, though, that these hearings are often emotionally charged cases – especially when the owner appears – as the animals are either valued commodities or valued companions.

Unlike a criminal hearing where the trier of facts must determine whether all the elements of the crime have been proved beyond a reasonable doubt, in the civil hearing, the complaining party (the city) must prove by a preponderance of the evidence that the owner cruelly treated the animal according to the definition in Section 821.021.²² There is no culpable mental state as there is in the criminal offense (where the State must prove the conduct was committed intentionally, knowingly, or recklessly). In this type of hearing, the complaining party (also known as the petitioner) must just prove that more likely than not, the cruel conduct occurred.

There are many debatable questions as to what happens during the hearing.

Do the Rules of Evidence apply? Presumably, yes; when would they not? However, the judge has wide discretion in setting the stage for this type of hearing. Keep in mind the emotional nature of the proceeding and invoke the Rule if there is contradictory testimony expected. Most importantly, make sure there is a bailiff in the courtroom to maintain order and decorum.

Do the Rules of Civil Procedure

apply? Case law makes clear that these matters are civil.²³ However, the Texas Rules of Civil Procedure explicitly apply to justice, county, and district courts, and strictly speaking, do not apply to municipal or corporation (the precursor to municipal) courts.²⁴ Yet, because the matter is civil, municipal courts could benefit from becoming familiar with the Rules of Civil Procedure to apply those general and justice court-specific rules whenever necessary.

What if the seizure warrant is not served immediately? If the warrant is not executed and notice delivered until the day before the hearing is scheduled, what happens? This is not a search warrant governed by the Code of Criminal Procedure with “expiration dates.” However, according to the Rules of Civil Procedure, the court may at any time in its own discretion, order the time period enlarged.²⁵ This should be considered in the interest of justice when the owner has not had sufficient notice. Judges should be cautious, however, to not grant continuances as a matter of course, as the statute is firm in its 10-day time period, which begs the question as to whether a continuance can even be granted.

But the million-dollar question is: Does the owner have the right to a jury trial? The cruelly-treated animal provisions in Chapter 821 do not explicitly grant the right to trial by jury; it does not even mention the word “trial.” It is a hearing, and the decision is made by the “court.” On first thought, this would mean there is no right to a jury trial. However, a look at constitutional and case law makes this a more difficult issue.

Article I, Section 15 of the Texas Constitution states: “The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and

efficiency... .” Legal scholars have posited that Section 15 permits the Legislature to deny the right to trial by jury in cases where no such right existed at common law when the Constitution went into effect.²⁶ As the civil remedy for cruelly-treated animals did not exist as a suit at common law in 1876, many agree there is no right to a jury trial under the Texas Constitution.

However, according to the Beaumont Court of Appeals in *Granger v. Folk*, 931 S.W.2d 390 (Tex. App.—Beaumont 1996), “restrictions placed on the right to a jury trial will be subjected to the utmost scrutiny.”²⁷ In fact, the Beaumont Court of Appeals held there was a right to a jury trial in a proceeding under Chapter 821, and this is, albeit from an intermediate appellate court, the only directly on-point case under Texas law. The limited case law addressing cruelly-treated animal hearings under Chapter 821 all arise from appeals following a jury trial.²⁸ There is not, as of yet, any published case law affirming a denial of a jury trial, and there is no definitive decision by the Texas Supreme Court.²⁹

Alas, there is no black and white answer to this question that can be given by TMCEC.³⁰ So let us finally move on to areas with more guidance... .

The Disposition

At the conclusion of the hearing, the court has two options: either find the owner treated the animal cruelly or find the owner did not. If the court finds that the owner has not cruelly treated the animal, the court must order the animal be returned to the owner.³¹ If the court finds the owner has cruelly treated the animal, the court shall order that the owner be divested of ownership of the animal and then decide on a disposition. This is not done in a judgment, but in an

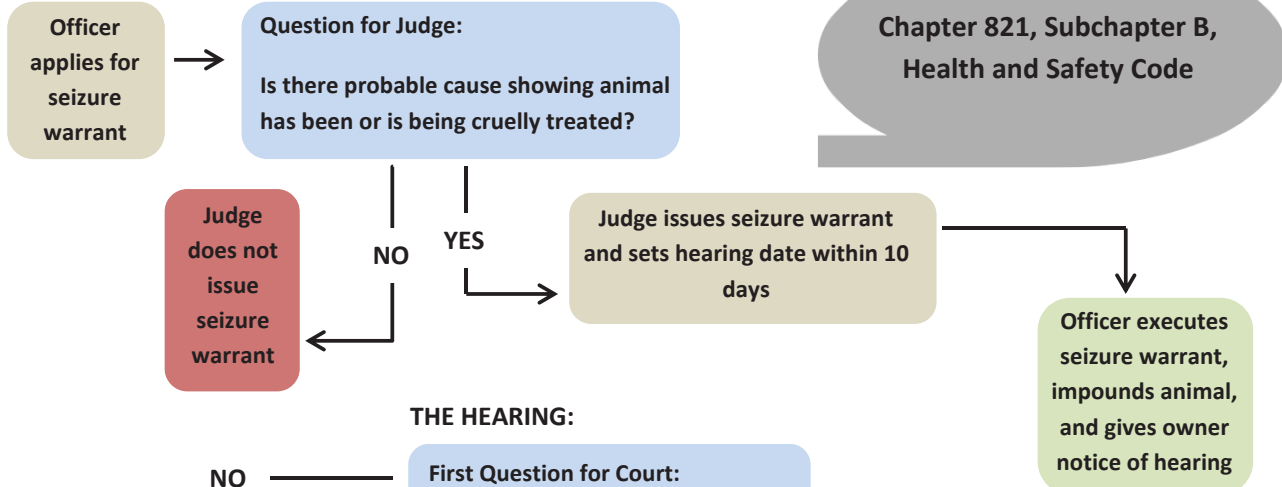
order.

Upon a finding of cruel treatment, the court shall order one of three things: that the animal be sold at public auction; that the animal be given to a nonprofit animal shelter, pound, or society for the protection of animals; or order the “death penalty” (i.e., that the animal be humanely destroyed - euthanized) if the court can find that is in the best interest of the animal or public health and safety.³² Finally, upon a finding of cruel treatment, the court shall order the owner to pay all “court costs” including the costs of investigation, expert witnesses, housing and caring for the animal during its impoundment (for the past 10 or so days), conducting any public sale, or humanely destroying the animal.³³ It is important to note that these are not the traditional court costs we know in municipal court. There is no consolidated fee, arrest fee, or security fee, as it is not a criminal matter or conviction. There are no costs to be forwarded to the State Comptroller. Do not confuse these “court costs” with the usual definition, but think of them as the remedial element of the civil process. In that respect, the amount of the costs incurred by the city is something the city attorney, prosecutor, or law enforcement officer should be prepared to present to the court following or at the conclusion of the hearing. The cost of housing and caring for the impounded animal will also be relevant in setting an appeal bond.

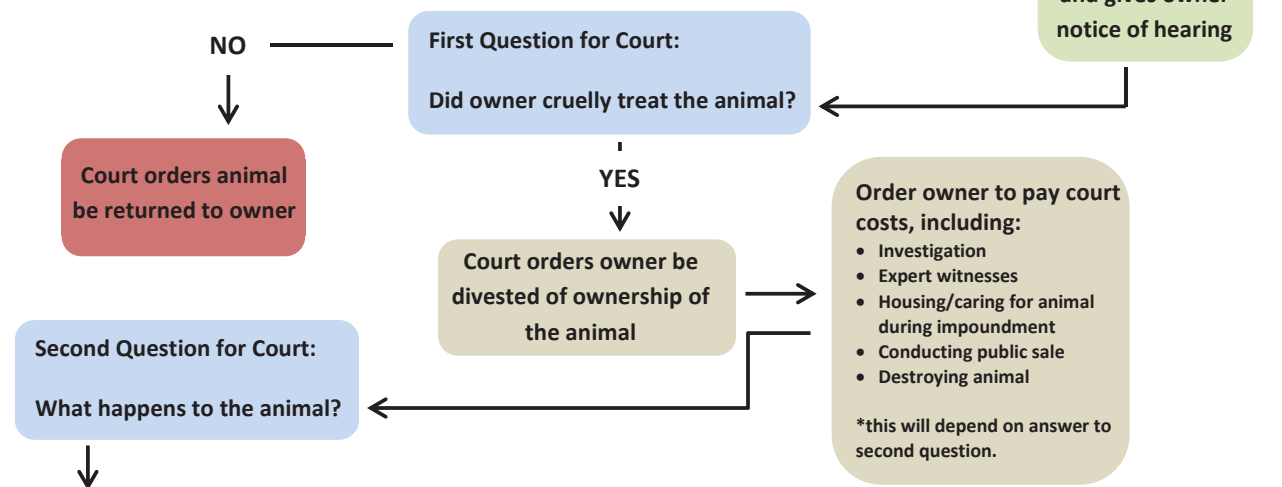
If the court orders the animal to be sold or given up, the court may order that the animal be spayed or neutered at the cost of the receiving party.³⁴ If the court orders the animal be sold at public auction, notice of the auction must be posted on a public bulletin board where other public notices are posted for the county/municipality.³⁵ There are no rules for the auction itself, but presumably,

Cruelly-Treated Animal Hearing Process

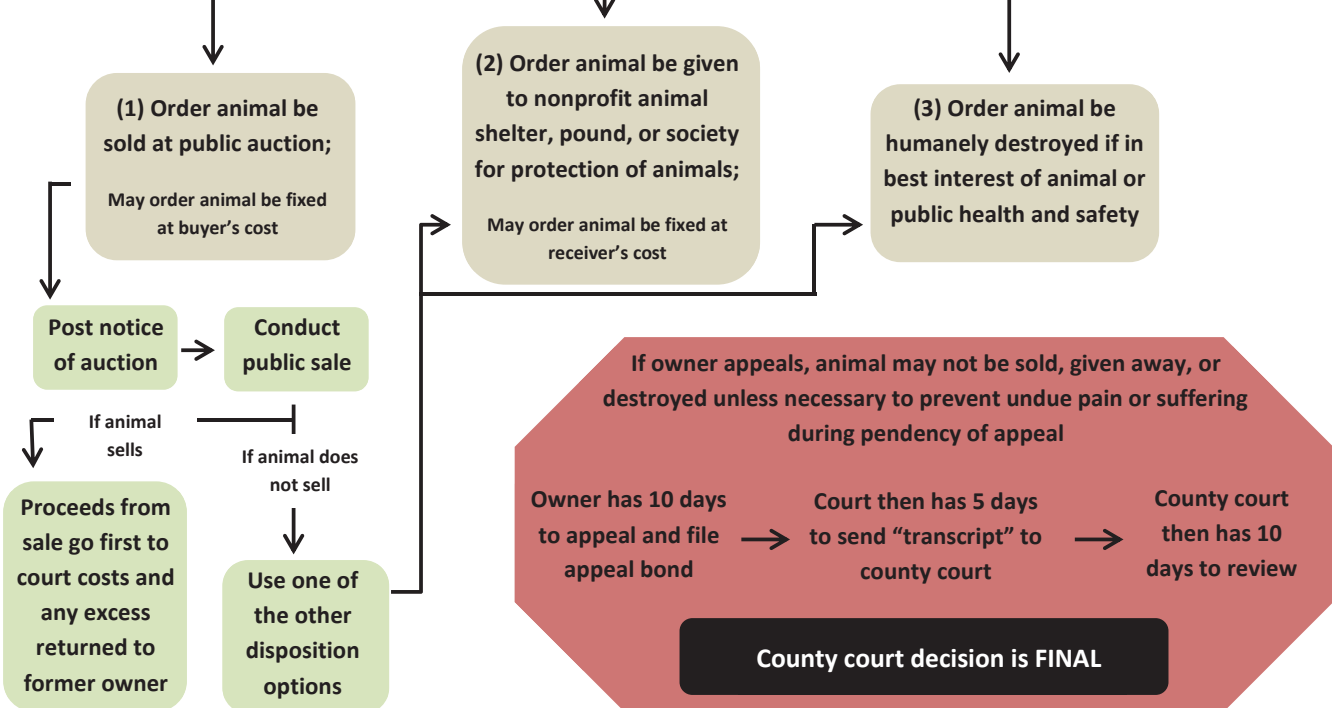
BEGINNING THE PROCESS:



THE HEARING:



CHOOSE ONE OF THE 3:



the process should follow that used for other property sold at public sale by a local government. The proceeds from the sale must first be applied to the costs ordered by the court, and any excess proceeds shall be returned to the municipal or justice court to return to the former owner.³⁶ Funny how a person divested of ownership for cruelly treating an animal could potentially profit from that order! However, the former owner may not bid, himself or through a representative, at the auction.³⁷

If the officer conducting the auction is unable to sell the animal, the officer can then resort to one of the other disposition options – giving the animal to a nonprofit shelter, pound, or protection society, or humanely destroying the animal if that is in the animal’s and public’s best interest.³⁸

However, before the animal is given over to a shelter, sold, or destroyed, the owner is entitled to an appeal, and during the pendency of the appeal, the city should take all steps to maintain the status quo. The animal may not be sold or given away, and should only be destroyed to prevent the undue pain or suffering of the animal.³⁹

The Appeal

An owner divested of ownership may appeal the order to a county court or county court at law in the county in which the justice or municipal court sits.⁴⁰ This is a huge improvement in the law courtesy of Senate Bill 408, which took effect September 1, 2009. Pre-SB 408, an owner divested of ownership could only appeal if the animal was ordered sold at public auction. If the court ordered the animal to be given to a shelter or worse, destroyed, there was no appeal mechanism.⁴¹ Now, an owner divested of ownership, no matter the disposition, can appeal the order, with defined timelines.

Not later than the 10th calendar day

after the date the order is issued, the owner must file a notice of appeal and appeal bond to perfect the appeal. The appeal bond amount shall be set by the municipal judge (or justice of the peace) at an amount adequate to cover the estimated expenses that will be incurred by the city (or county) in housing and caring for the impounded animal during the appeal process.⁴² This is another reason why it is important to have someone at the hearing that can present evidence on the costs incurred by the city or county.

Not later than the fifth calendar day after the appeal is perfected, the court shall deliver a copy of the court’s transcript to the county court or county court at law by which the appeal will be heard.⁴³ As the statute makes no distinction between courts of record or courts of non-record, the use of the term “transcript” is problematic. Municipal courts of record will have some recording or transcript of the hearing by virtue of being a court of record. However, municipal courts of non-record or justice courts are surely not expected to record this civil hearing at the court’s expense. The statute also makes no mention as to who shall bear the expense of producing the transcript. Looking to Texas Rule of Civil Procedure 574 for guidance, when an appeal is perfected from a justice court, the court shall send the original papers in the cause on to the county court.⁴⁴ This is similar to what municipal courts of non-record do in an appeal of a criminal conviction. Presumably then, where Section 821.025 mentions transcript, the municipal or justice court shall forward the court’s *record* to the county court. Of course, if the court has a transcript or recording of the hearing, that should be forwarded as well.

Finally, not later than the 10th calendar day after the date the county court or county court at law receives

the “transcript,” the appellate court shall dispose of the appeal.⁴⁵ Doing the math, the whole appeal process should take no longer than 25 days (10 from the date of the order plus five from the date the appeal is perfected plus 10 from the date the transcript is received). Again, as the statute makes no distinction between courts of record or non-record, presumably, appeals from a municipal court of record will be based on error in the record, while appeals from municipal courts of non-record or justice courts will be de novo review.

What Section 821.025 does not address is any requirement that a motion for rehearing or new trial be made prior to appeal, as that requirement exists for criminal cases. A reading of Texas Rules of Civil Procedure 571 through 574 (regarding perfecting an appeal, appeal bonds, and duties of the justice court upon an appeal) suggests that no requirement is necessary – dates and duties are dependent on the date of judgment **or** the date a motion for new trial is denied.

The statute does say that the decision of the county court or county court at law is final and may not be further appealed.⁴⁶

Final Thoughts

As previously mentioned, there is scarce case law addressing this civil process for cruelly-treated animals in municipal or justice courts. This may be due to the fact that these cases cannot be appealed out of the county court, so there is little opportunity to get the case to an intermediate appellate court that would publish a decision. What recent case law does exist focuses primarily on the issue of double jeopardy. In a nutshell, case law makes it clear that this procedure is civil in nature, not punitive.⁴⁷ Double jeopardy does not bar remedial civil proceedings based on the same offense as a prior

criminal prosecution, or vice versa.⁴⁸ Civil proceedings for the same circumstances do not bar criminal prosecution if the civil proceedings are remedial; however, they do if the intent or effect of the civil proceedings is criminally punitive.⁴⁹ One appellate court has held, in *State v. Almendarez*, 301 S.W.3d 886 (Tex. App.—Corpus Christi 2009), that there was no proof that the sanctions (i.e., the disposition order) imposed in the justice court “were so punitive either in purpose or effect as to transform the civil action and remedies imposed into a criminal punishment.”⁵⁰

Section 821.023 contemplates both a civil hearing and criminal prosecution out of the same cruel treatment, emphasizing the belief that the civil process is a way to protect the abused, while the criminal process is a way to punish the abuser. A conviction for animal cruelty under Section 42.09 or 42.092 of the Penal Code can be introduced at a hearing under the Health and Safety Code and is prima facie evidence that an animal has been cruelly treated. However, the reverse is not true; testimony by an owner at a cruelly-treated animal hearing under the Health and Safety Code is not admissible in a criminal trial under the Penal Code.⁵¹

On a final note, though there are unanswered questions and holes in the process for conducting a cruelly-treated animal hearing, the Legislature has continually groomed

For more on conducting a cruelly-treated animal hearing in municipal court, watch the “Cruelly-Treated Animal Hearing” Webinar On-Demand on the TMCEC Online Learning Center at <http://online.tmcec.com>, or attend the break-out track at the Regional Judges Program this academic year.

Chapter 821 of the Health and Safety Code, and will hopefully revisit these issues this spring. The media attention surrounding the recent U.S. Global Exotics case out of the Arlington Municipal Court of Record, spawning the largest animal seizure and forfeiture in U.S. history, (of over 26,000 animals) has certainly made its way to the Capitol.

¹ Cynthia Hodges, “The Link Between Animal Cruelty and Violence Towards People” available at www.cynthiahodges.com/animals/pages/animal_human_violence.pdf (December 2007); National District Attorneys Association “Talking Points: Cruelty to Animals by Children, Serial Killers and Other Violent Criminals” (March 2006). On a side note, Ted Bundy was initially caught and arrested for a traffic violation.

² Cynthia Hodges, “The Link Between Animal Cruelty and Violence Towards People,” *Supra*.

³ *Id.*; “The Link Between Animal Cruelty and Interpersonal Violence” available at www.pet-abuse.com/pages/abuse_connection.php#ixzz19ux97QNN; see also National District Attorneys Association “Talking Points: Animal Cruelty and Its Link to Domestic Violence, Child and Elder Abuse” (March 2006); Frank R. Ascione, Ph.D., Claudia V. Weber, M.S., and David S. Wood, “The Abuse of Animals and Domestic Violence: A National Survey of Shelters for Women Who Are Battered” available at www.vachss.com/guest_dispatches?ascione_1.html.

⁴ See the *Baltimore Sun*’s Unleashed Blog Poll: “Fighting Animal Cruelty an Uphill Battle Nationally” available at http://weblogs.baltimoresun.com/features/mutts/blog/2010/12/post_72.html.

⁵ “Animal Abuse Registry: Suffolk County, NY Creating Nation’s First Public Database Tracking Animal Cruelty Offenders” available at www.huffingtonpost.com/2010/10/14/animal-abuse-registry-suf_n_762905.html.

⁶ Additionally, Section 42.09 addresses Cruelty to Livestock Animals, Section 42.091 addresses Attack on Assistance Animal, and Section 42.10 criminalizes Dog Fighting.

⁷ Sec. 42.092(b)(3), (4), (5), (6), and (9), Penal Code.

⁸ Sec. 42.092(c), Penal Code.

⁹ Sec. 42.092(b)(1), (2), (7), and (8), Penal Code.

¹⁰ Sec. 42.092(c), Penal Code.

¹¹ Sec. 42.092(d) and (e), Penal Code.

¹² Sec. 42.092(g), Penal Code. This is not to be confused with the civil remedial

process used to protect the animal discussed in the second half of the article.

¹³ Art. 12.02(a), Code of Criminal Procedure.

¹⁴ Art. 12.01(7), Code of Criminal Procedure.

¹⁵ See Chapters 821 and 822, Health and Safety Code. See also *Chambers v. Perry*, 2010 Tex. App. LEXIS 2054 (Tex. App.—Dallas March 24, 2010); *Russu v. State*, 2005 Tex. App. LEXIS 3862 (Tex. App.—Houston [1st Dist.] May 19, 2005).

¹⁶ See *Granger v. Folk*, 931 S.W.2d 390 (Tex. App.—Beaumont 1996).

¹⁷ Cruelly-treated animal cases are not reported on the Official Municipal Court Monthly Report to the Office of Court Administration, nor are court costs collected on these cases to result in a report to the Comptroller of Public Accounts.

¹⁸ *State v. Almendarez*, 301 S.W.3d 886 (Tex. App.—Corpus Christi 2009).

¹⁹ Sec. 821.021, Health and Safety Code.

²⁰ See *Pine v. State*, 921 S.W.2d 866 (Tex. App.—Houston [14th Dist.] 1996) for a rather academic legal discussion of *in rem* forfeiture actions (referring to the disposition provisions under the Health and Safety Code as a civil forfeiture). Note that later cases object to the classification of these proceedings as forfeiture actions.

²¹ Sec. 821.023(c), Health and Safety Code.

²² According to *Black’s Law Dictionary, Ninth Edition*, the preponderance of the evidence is “superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.”

²³ See *Granger v. Folk, Supra; State v. Almendarez, Supra*.

²⁴ Tex. R. Civ. Pro. 2.

²⁵ Tex. R. Civ. Pro. 5.

²⁶ See *Granger v. Folk, Supra; Johnson v. State*, 267 S.W. 1057 (Tex. Civ. App. 1925).

²⁷ *Granger v. Folk*, 931 S.W.2d at 393.

²⁸ See e.g., *Russu v. State, Supra* (did not reach the issue of right to a jury trial, though the denial of a jury trial was one of appellant’s grounds for appeal); *Keigley v. State*, 2003 Tex. App. LEXIS 7236 (Tex. App.—Dallas August 25, 2003) (owner is entitled to a jury trial in the county court under Chapter 821 of the Health and Safety Code, but in this case, the owner failed to pay the jury fee required under the Rules of Civil Procedure and failed to object to proceeding without a jury); *Granger v. Folk, Supra* (court found owner was entitled to jury trial; trial court abused its discretion in granting State’s Motion

to Return Defendant's Jury Fee where owner requested a jury trial and paid the jury fee); *Pine v. State, Supra* (forfeiture case tried de novo before a jury in county court following justice court's order of forfeiture).

²⁹ Petition for review was denied by the Texas Supreme Court in *Russu v. State* at 2006 Tex. LEXIS 292 (Tex. Apr. 21, 2006). The *Russu* brief argued that there was a divide amongst the appellate courts as to whether a right to jury trial existed.

³⁰ However, in the meantime, look at Tex. R. Civ. Pro. 544 (Jury Trial Demanded for Justice Courts).

³¹ Sec. 821.023(g), Health and Safety Code.

³² Sec. 821.023(d), Health and Safety Code.

³³ Sec. 821.023(e), Health and Safety Code.

³⁴ Sec. 821.023(f), Health and Safety Code.

³⁵ Sec. 821.024(a), Health and Safety Code.

³⁶ Sec. 821.024(b), Health and Safety Code.

³⁷ Sec. 821.024(a), Health and Safety Code.

³⁸ Sec. 821.024(c), Health and Safety Code.

³⁹ Sec. 821.025(b), Health and Safety Code.

⁴⁰ Sec. 821.025(a), Health and Safety Code.

⁴¹ All of the current case law addressing appeals under Chapter 821 are pre-SB 408. See *Granger v. Folk, Supra*; *Pitts v. State*, 918 S.W.2d 4 (Tex. App.—Houston [1st Dist.] 1995).

⁴² Sec. 821.025(a), Health and Safety Code.

⁴³ *Id.*

⁴⁴ Texas Rule of Civil Procedure 574 is titled "Transcript."

⁴⁵ Sec. 821.025(a), Health and Safety Code.

⁴⁶ *Id.*

⁴⁷ See e.g., *State v. Almendarez, Supra*; *Granger v. Folk, Supra*.

⁴⁸ *State v. Solar*, 906 S.W.2d 142 (Tex. App.—Fort Worth 1995).

⁴⁹ *Rodriguez v. State*, 93 S.W.3d 60 (Tex. Crim. App. 2002).

⁵⁰ *State v. Almendarez*, 301 S.W.3d at 895 (addressing all of the Hudson factors to determine that terminating the owner's rights in a filly did not preclude criminal prosecution for animal cruelty).

⁵¹ Sec. 821.023(a) and (b), Health and Safety Code.

FROM THE PROSECUTOR'S PERSPECTIVE: LESSONS LEARNED FROM AN ANIMAL CRUELTY SEIZURE WITH MORE THAN 26,000 ANIMALS

by David Johnson
Assistant City Attorney & Deputy Chief Prosecutor
City of Arlington

Most animal cruelty hearings under Health and Safety Code Chapter 821 are short, relatively simple, and have no appeal. But every now and then, you encounter a case that breaks the mold on everything you thought you knew about animal cruelty hearings in municipal court. For the City of Arlington, and for me, that was the U.S. Global Exotics (USGE) case in December 2009.

USGE was an exotic animal import/export business operating out of an industrial warehouse in east Arlington. With the help of a U.S. Fish and Wildlife special agent and an undercover informant, the City of Arlington discovered the horrific treatment and unconscionable neglect suffered by animals at USGE. Animals were left in shipping containers for weeks at a time without food or water. Sick or injured animals were denied necessary medical treatment. Animals were regularly starved so that USGE could save money on food. Cages and habitats were rarely cleaned and became rife with disease.

When Arlington executed an animal cruelty seizure warrant at USGE, there were over 26,000 exotic animals taken. During the ensuing seven-day hearing and the appeal, USGE's attorneys threw every legal argument in the book at Arlington, but we prevailed.

To help ensure successful animal cruelty hearings across Texas, the following are some of Arlington's "Lessons Learned" from this one-of-a-kind case.

(1) City attorneys: Review the seizure warrant before presenting it to the judge. Describe the probable cause for animal cruelty clearly and specifically. If there are multiple animals, list why all of the animals are cruelly treated or how the conditions **as a whole** constitute cruelty to every animal.

(2) Know the proper styling for the case - *In re: name or description of animal*. The styling is not: *State of Texas vs. Owner, City vs. Owner, or In re: Owner*. The proper styling can preempt arguments that the animal

cruelty hearing is like a civil lawsuit where parties need to be "joined" and identified in the case styling.

(3) If a business owns the animal(s), send hearing notices to the business' president, vice president, registered agent, or partners.

(4) Call expert witnesses, if needed, such as veterinarians or other animal experts, who can testify about the appearance of healthy and unhealthy animals, what certain animal behavior means, etc.¹

(5) Arlington found that the Texas Rules of Civil Procedure (TRCP), strictly speaking, do not apply to animal cruelty hearings in **municipal courts**. They only apply to civil actions "in the justice, county, and district courts."² However, the TRCP may be amended soon to include municipal courts.

(6) City attorneys: Ask the court for a brief hearing on court costs (restitution) **after** the hearing, upon a finding

of cruel treatment—similar to the “punishment phase” of a bifurcated criminal trial.

(7) The owner’s appeal bond is **not** a criminal defense attorney appearance bond. It should be conditioned on the outcome of the appeal, not on the owner’s appearance at appeal settings.³

(8) Arlington found that there is no right to a jury trial in a civil animal cruelty hearing. This point is debatable and contrary to two appellate court cases,⁴ but I believe that case law supports this position. The term “jury”

does not appear in Chapter 821.⁵ There is no such right under the U.S. Constitution.⁶ Regarding civil matters, the Texas Constitution preserves the right to a jury trial only in actions or analogous actions that were tried before a jury in 1876 when the Constitution was passed.⁷ Animal cruelty hearings (or analogous actions) did not exist in 1876.

Hopefully these “Lessons Learned” will help you successfully handle animal cruelty hearings, so that you do not have to “re-invent the wheel” for the next USGE case.

¹ Secs. 5.255 and 5.201, Business Organizations Code.

² See Tex. R. Civ. Proc. 2.

³ See TMCEC *Forms Book* for an animal cruelty appeal bond form.

⁴ See *Granger v. Folk*, 931 S.W.2d 390 (Tex. App.—Beaumont 1996); *Pine v. State*, 921 S.W.2d 866 (Tex. App.—Houston [14th Dist.] 1996).

⁵ See e.g., Section 821.023(d) and (e), Health and Safety Code.

⁶ See U.S. Const. Amends. VII, XIV; *Curtis v. Loether*, 415 U.S. 189, 192, n. 6 (1974).

⁷ See Tex. Const. Art. I, Sec. 15; *Texas Ass’n of Business v. Texas Air Control Bd.*, 852 S.W.2d 440, 450 (Tex. 1993).

TRAFFIC ISSUES FOR JUDGES AND ADJUDICATORS: A SELF-STUDY WEB COURSE

Traffic court cases routinely involve issues that are technologically complex and involve critical constitutional issues of search and seizure, confession admissibility, and the law of arrest. This is particularly true with respect to impaired driving cases. The judges who handle these cases are routinely confronted with constitutional issues including those involving searches, seizures, and arrests, as well as the admissibility of statements, admissions, and physical evidence. Even so-called “simple drunk driving” cases routinely involve medical and technologically sophisticated evidentiary issues such as retrograde extrapolation, blood alcohol pharmacology, blood/breath partition ratios, infrared spectrometry, horizontal gaze

nystagmus, passive alcohol sensors, and the admissibility of drug recognition expert testimony.

The Traffic Issues for Judges and Adjudicators self-study course addresses these issues and many others. It was developed for both new and more experienced traffic judges and adjudicators who would like a refresher on traffic issues. The National Judicial College, with funding from the National Highway Traffic Safety Administration (NHTSA), developed the web-based program. The program is offered free of charge but prospective participants must register. The self-study course contains five modules on the following topics: 4th and 5th Amendments, DUI, special populations, unlicensed

and uninsured drivers, and commercial driver’s licensing laws. The modules provide up-to-date information on each topic and provide learners with quizzes to gauge how well they learned the content. To complete the program and take the final exam only takes eight to 10 hours. Learners have 30 days in which to complete the program. Once the learners pass the final exam, they will receive certificates of completion.

To register for this course please complete NJC’s course registration form at <http://register.judges.org/>. For questions about the course, contact Melody Luetkehans at 800.255.8343 or melody@judges.org.

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ETHICS UPDATE

ETHICS OPINION 599 - July 2010

The Professional Ethics Committee For the State Bar of Texas

Question

Under the Texas Disciplinary Rules of Professional Conduct, may a lawyer who serves as bail bondsman for his client in a criminal prosecution add to the court's form of bond a provision in which the client agrees that, if the client fails to appear in court, the attorney is authorized to enter a "no contest" plea that will result in a fine and may result in the issuance of a warrant for the client's arrest?

Opinion

Statement of Facts

A lawyer represents an individual who is being prosecuted for a misdemeanor in municipal court. In addition to representing the client in the criminal prosecution, the lawyer also serves as the client's bail bondsman.

The municipal court promulgates a form for bail bonds used in the court's criminal proceedings. The bond form obligates the client, as principal, and the client's surety (here, the lawyer) to pay a specified amount plus fees and expenses that may be incurred by a peace officer in re-arresting the client if any of the conditions of the bond are violated. The conditions of the bond include the client's promise to appear before the municipal court at a specified date and time.

In addition to the standard language in the municipal court's form of bond, the lawyer has added language providing for the client's agreement that, if the client does not make the required personal appearance before the court, the lawyer or an associate is authorized to plead "no contest" on behalf of the client. The language added by the lawyer includes an acknowledgement by the client that such "no contest" plea for the client will have the effect of a guilty plea and will bind the client to pay a fine and court costs, which if unpaid will result in the issuance of a warrant for the client's arrest.

Discussion

In the scenario described above, the lawyer, in addition to representing the client, is engaging in a business transaction with the client by serving as the client's bail bondsman. Rule 1.08(a) of the Texas Disciplinary Rules of Professional Conduct prohibits a lawyer from entering into a business transaction with a client unless specified conditions are met:

(a) A lawyer shall not enter into a business transaction with a client unless:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed in a manner which can be reasonably understood by the client;
- (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
- (3) the client consents in writing thereto."

In the opinion of the Committee, the transaction violates the requirement of Rule 1.08(a)(1) that the terms of the transaction be "fair and reasonable to the client" The provision added to the bond form is contrary to the interests of the client because the provision subjects the client to the possibility of automatic punishment without regard to whether any punishment is deserved and without regard to whether or not the court would have excused the client's failure to appear. On the facts presented, the added provision is of no benefit to the client but has been added by the lawyer solely to protect the financial interest of the lawyer. Hence, even if all other requirements of Rule 1.08(a) were met, the proposed arrangement would violate Rule 1.08(a)(1) because the terms of the transaction are not "fair and reasonable" to the client.

The arrangement here considered also creates an impermissible conflict of interest for the lawyer in violation of Rule

1.06. Rule 1.06(b) provides that “a lawyer shall not represent a person if the representation of that person . . . (2) reasonably appears to be or become adversely limited ... by the lawyer’s or law firm’s own interests.” Rule 1.06(c) generally allows representation to continue with client consent in spite of a conflict of interest within the meaning of Rule 1.06(b) if under Rule 1.06(c)(1) “the lawyer reasonably believes the representation of each client will not be materially affected” However, in the situation here considered, the lawyer could not reasonably believe that the representation of the client would not be materially affected. The language the lawyer has added to the conditions of the bond gives the lawyer a substantial incentive to enter a plea of “no contest” on the client’s behalf, without regard to whether such a plea is truly in the client’s best interest. Rather than zealously representing the client by arguing that the court should excuse the client’s failure to appear and rather than simply standing liable under the terms of the bond, the lawyer’s own interests will be better (or more easily) served if the lawyer simply enters the “no contest” plea. This arrangement thus creates a prohibited direct conflict of interest for the lawyer. The result is a situation described in Comment 4 to Rule 1.06:

Loyalty to a client is impaired ... in any situation when a lawyer may not be able to consider, recommend or carry out an appropriate course of action for one client because of the lawyer’s own interests or responsibilities to others. The conflict in effect forecloses alternatives that would otherwise be available to the client.

Finally, the proposed arrangement is contrary to Rule 1.02(a), which provides that, except in circumstances not here applicable, “a lawyer shall abide by a client’s decisions ... (3) In a criminal case, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.” The language added by the lawyer in the bond purports to authorize the lawyer to enter a “no contest” plea on the client’s behalf but does not condition the entry of such plea on a further consultation between the lawyer and the client. Thus, if the lawyer acts on this added language without a contemporaneous decision by the client after consultation, the lawyer will violate the lawyer’s duty under Rule 1.02(a)(3) to consult with his client and abide by the client’s decision with respect to the entry of a plea.

Conclusion

Under the Texas Disciplinary Rules of Professional Conduct, it is not permissible for a lawyer who serves as bail bondsman for his client in a criminal prosecution to add to the court’s form of bond a provision in which the client agrees that, if the client fails to appear in court, the attorney is authorized to enter a “no contest” plea that will result in a fine and may result in the issuance of a warrant for the client’s arrest. Such an arrangement is a prohibited business transaction between lawyer and client that is not on terms fair and reasonable to the client, creates an impermissible conflict of interest for the lawyer, and impermissibly purports to eliminate the lawyer’s duty to consult with, and abide by the decision of, the client concerning the entry of a plea.

REMINDER: ALTERNATIVE JUDICIAL EDUCATION

Experienced municipal judges who have completed two years of TMCEC courses may opt to fulfill the 12-hour mandatory judicial education requirements for 2010 - 2011 by attending a course offered by an approved continuing legal education provider. The accredited providers are the American Academy of Judicial Education, ABA Traffic Court Seminar, CoLoGo Conference, the Harvard Law School, the Houston Law School and Foundation, the Juvenile Law Section of the State Bar of Texas, National College of District Attorneys, National Council for Juvenile and Family Law Judges, National Judicial College, South Texas School of Law, State Bar of Texas Professional Development Programs, Texas Council on Family Violence, Texas Juvenile Probation Commission, the Texas Criminal Defense Lawyers Projects, Texas District and County Attorneys’ Association, Texas Justice Courts Training Center, and the Texas Municipal Courts Association. Please check with TMCEC for the most up-to-date list of approved providers. The course must relate to the jurisdiction of the municipal courts and be at least 12 hours in length. Video, audio, and online programs are ineligible. After an initial two-year period, judges may “opt-out” only every other year. Judges are asked to complete an intent to opt out form prior to April 30, 2011. If you have questions, please contact Hope Lochridge at the Center (800.252.3718).

FROM THE STATE COMMISSION ON JUDICIAL CONDUCT

Examples of Judicial Misconduct

The following are examples of judicial misconduct that resulted in disciplinary action by the Commission in fiscal year 2010. These are illustrative examples of misconduct and do not represent every disciplinary action taken by the Commission in fiscal year 2010. The summaries below are listed in relation to specific violations of the Texas Code of Judicial Conduct, the Texas Constitution, and other statutes or rules. They are also listed in descending order of the severity of the disciplinary action imposed, and may involve more than one violation. The full text of any public sanction is published on the Commission website. A copy may also be requested by contacting the Commission.

These sanction summaries are provided with the intent to educate and inform the judiciary and the public regarding misconduct that the Commission found to warrant disciplinary action in fiscal year 2010. The reader should note that the summaries provide only general information and omit mitigating or aggravating facts that the Commission considered when determining the level of sanction to be imposed. Additionally, the reader should not make any inferences from the fact situations provided in these summaries. It is the Commission's sincere desire that providing this information will protect and preserve the public's confidence in the integrity, impartiality and independence of the judiciary and further assist the judiciary in establishing, maintaining and enforcing the highest standards of judicial and personal conduct.

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

- In one case, the judge failed to follow the law and failed to maintain professional competence in the law by: (a) issuing a citation affording the defendant less than ten (10) days to answer the suit and/or appear for trial; (b) failing to provide adequate notice of any trial settings to either party; and (c) holding a second trial after a default judgment had already been entered based solely on an oral request from the defendant. In another case, the judge failed to follow the law and failed to maintain professional competence in the law by: (a) issuing a final judgment and a writ of execution in a small claims proceeding for the return of property, in violation of Chapter 28 of the Texas Government Code; and (b) issuing an amended judgment on his own motion and without notice to the parties, well after his court had lost jurisdiction over the matter. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] Public Admonition and Order of Additional Education of a Justice of the Peace. (12/17/09).
- The judge failed to comply with the law and failed to maintain professional competence in the law by detaining certain juvenile non-offenders in a local juvenile detention center. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct] Private Reprimand of a District Judge. (02/03/10).
- The judge failed to follow the law when she denied a defendant his constitutional right to a jury trial, which he had properly requested. [Violation of Canon 2A of

the Texas Code of Judicial Conduct.] Private Warning of a Former Justice of the Peace. (10/05/09).

- The judge failed to follow the law when he denied three defendants their right to a bond. [Violation of Canon 2A of the Texas Code of Judicial Conduct.] Private Admonition of a District Judge. (10/09/09).
- The judge detained a defendant and ordered the defendant to undergo a urinalysis test after the jury returned a verdict of acquittal. [Violation of Canon 2A of the Texas Code of Judicial Conduct.] Private Admonition of a Former District Judge. (12/17/09).
- The judge failed to comply with the law by hiring a relative to work in her court. [Violation of Canon 2A of the Texas Code of Judicial Conduct] Private Admonition of a Justice of the Peace. (01/27/10).

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

- The judge used his official judicial letterhead to express his opposition to the Texas Alcoholic Beverage Commission's plan to issue a mixed beverage license to an establishment in his community. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] Private Admonition of a Justice of the Peace. (10/14/09).
- The judge attempted to use her position as judge in order to advance the private interests of her husband when she (a) advised her husband not to cooperate

with the law enforcement and (b) informed the officer that if her husband were arrested, the judge would use her position to immediately release him. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] Private Admonition of a County Judge. (01/14/10).

- The judge misused the prestige of his judicial office to advance his personal interest by issuing a judicial order to prison officials ordering them to confiscate his personal response to a former client's attorney grievance against him. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] Private Admonition of a District Judge. (05/17/10).
- The judge lent the prestige of his judicial office to advance his pastor's private interests by requesting special treatment from another judge presiding over the pastor's case. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] Private Admonition of a Justice of the Peace. (08/02/10).

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

- The judge failed to comply with the law and failed to be patient, courteous and dignified in her dealings with the participants during a juvenile detention hearing by allowing her anger and frustration with the concerns and recommendations of the caseworkers and the juvenile's mother to interfere with her judgment. As a result, seven adults were briefly, but unlawfully detained in locked cells at the Juvenile Detention Center. Each one of those detainees reasonably perceived that this extreme action was punishment for making a recommendation with which the judge disagreed. While the judge's stated intention may have been commendable and her frustration understandable, her decision to execute that intent and "appease her anger" and frustration by having her bailiff lock these participants in juvenile detention cells was an abuse of the judge's authority and cannot be condoned. The facts and circumstances surrounding this incident simply do not justify the rare circumstance in which such an extraordinary and extreme exercise of judicial power would ever be warranted. As further demonstrated by the change in her tone and demeanor immediately following the detention, the judge knew, or should have known, that her actions were excessive, did not comply with the law, did not show respect for the law, and did not promote public confidence in the judiciary's integrity and impartiality. [Violation of Canons 2A and 3B(4) of the Texas Code of Judicial Conduct, and Article V, Section 1-a(6) of the Texas Constitution.]

Public Admonition of a Retired District Court Judge. (03/30/10).

CANON 3B(8): A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications or other communications made to the judge outside the presence of the parties between the judge and a party, an attorney, a guardian or attorney ad litem, an alternative dispute resolution neutral, or any other court appointee concerning the merits of a pending or impending judicial proceeding. A judge shall require compliance with this subsection by court personnel subject to the judge's direction and control.

- The judge met privately with a party and discussed substantive issues about a case, outside the presence of the opposing party. Based on the improper ex parte discussion, the judge granted the party's motion to vacate an order he had previously rendered in favor of the opposing side. The judge's conduct deprived the opposing party their right to be heard, and raised a legitimate question as to the judge's ability to decide the case in a fair and impartial manner, resulting in the judge's eventual recusal. [Violation of Canon 3B(8) of the Texas Code of Judicial Conduct.] Private Admonition of a District Judge. (11/19/09).
- The judge failed to accord a divorce petitioner the right to be heard when she dismissed his divorce petition for "want of prosecution" on two separate occasions without giving him the opportunity to appear. By failing to make an appropriate inquiry to determine whether the party intended to prosecute his default divorce case and/or whether he had made timely and appropriate attempts to appear in court to have his case heard, the judge denied him his fundamental right to access to the court. [Violation of Canons 2A and 3B(8) of the Texas Code of Judicial Conduct.] Private Admonition of a District Judge. (03/03/10).

CANON 4A: A judge shall conduct all of the judge's extra-judicial activities so that they do not: (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or (2) interfere with the proper performance of judicial duties.

- The judge misused her judicial office to advance the private interest of others and engaged in extra-judicial activities that cast reasonable doubt on her capacity to act impartially as a judge by (a) improperly meddling in the administrative affairs at a secondary school; (b) going to the school and directly intervening in student affairs and disciplinary matters when no case relating to same was pending in her court; and (c) improperly asserting jurisdiction in cases involving students who were charged with offenses greater than a class C

misdeemeanor. [Violation of Canons 2A, 2B and 4A(1) of the Texas Code of Judicial Conduct.] Private Admonition of a Former Municipal Court Judge. (08/02/10).

- In a news column, the judge identified himself as a judge, and then made specific comments about race to the extent that they were perceived by the public to be derogatory towards Whites, which called into question the judge's capacity to act impartially as a judge and cast public discredit on the judiciary and administration of justice. [Violation of Canon 4A(1) of the Texas Code of Judicial Conduct and Article 5, Section 1-a(6)A of the Texas Constitution.] Private Admonition of a Municipal Judge. (12/18/09).

CANON 4D(4)(c): Neither a judge nor a family member residing in the judge's household shall accept a gift, bequest, favor, or loan from anyone except...if the donor is not a party or person whose interests have come or are likely to come before the judge.

- The judge failed to comply with the law by accepting a valuable gift from a person whose interests did, and were likely to come before her court, when she attended San Antonio Spurs basketball games as the guest of an attorney/bail bondsman who practiced before her court. Because the propriety of her attendance at the basketball games as the guest of the attorney became a matter of public discussion, the public perception was that the judge's impartiality could reasonably be questioned when/if that attorney's clients were to appear before her. A judge must conduct all extra-judicial activities so that she not only is impartial, but appears to be impartial, while performing her judicial functions...Accepting valuable gifts from attorneys and/or persons with interests before the court,..., are actions that severely compromise the public's confidence in a judge's impartiality, independence and integrity, and cast discredit on the judiciary as a whole. [Violation of Canons 2A, 2B, 4A and 4D(4) of the Texas Code of Judicial Conduct, and Article V, section 1-a(6)A of the Texas Constitution.] Public Admonition of a County Court at Law Judge. (03/26/10).

CANON 5(2): A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party.

- The judge authorized the public use of her name endorsing another candidate for public office when she sent an e-mail communication expressly advocating that other individuals should vote for a specific candidate in the 2010 primary election. [Violation of Canon 5(2) of the Texas Code of

Judicial Conduct.] Private Warning of a County Court at Law Judge. (07/08/10).

Texas Constitution, Article V, Section 1-a(6)A. Any Justice or Judge of the courts established by this Constitution or created by the Legislature as provided in Section 1, Article V, of this Constitution, may, subject to the other provisions hereof, be removed from office for willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice. Any person holding such office may be disciplined or censured, in lieu of removal from office, as provided by this section.

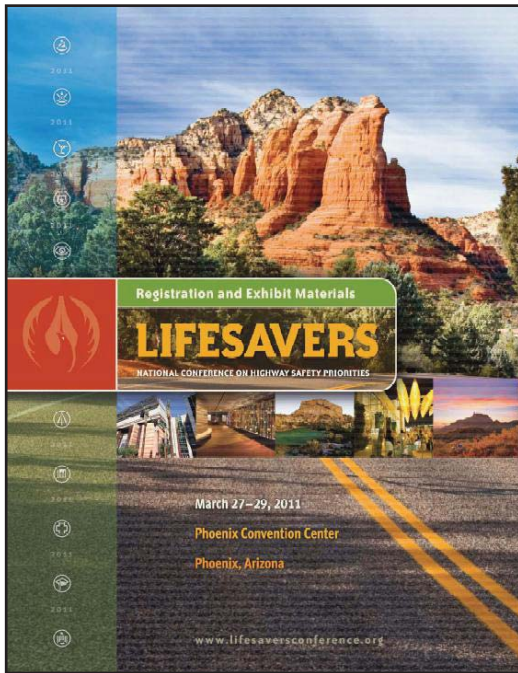
- The judge owes a duty to the public to ensure that his court staff is properly trained and adequately supervised; that cases filed in his court are handled competently and professionally; that paperwork prepared or handled by his court staff is accurate and reflects the correct disposition of the matters addressed therein; and that proper procedures are followed at all times so that the public maintains confidence in the judiciary and in the proper administration of justice. By failing to timely address the Commission's concerns until after the Commission and the media brought public attention to the problems of his court, the judge demonstrated persistent conduct that was clearly inconsistent with the proper performance of his duties and cast public discredit upon the judiciary or administration of justice. [Violation of Article V, section 1-a(6)A of the Texas Constitution.] Public Admonition of a Justice of the Peace. (09/09/09).
- The judge failed to disclose her relationship to an attorney while presiding over a case in which the attorney represented a party. The judge further appointed the attorney as an ad litem in several proceedings in her court, awarded the attorney fees, and failed to voluntarily recuse herself from those cases and/or disclose the relationship with the attorney to the parties in those cases. [Violation of Article V, Section 1-a(6)A of the Texas Constitution.] Private Reprimand of a Senior Judge. (10/30/09).
- The judge failed to timely execute the business of the court by consistently failing to hold trials, which caused unreasonable delays and prevented defendants the right to be heard. [Violation of Canons 2A, 3B(1), 3B(2), 3B(8) of the Texas Code of Judicial Conduct, and Article V, Section 1-a(6) of the Texas Constitution.] Private Warning and Order of Additional Education of a County Judge. (08/04/10).



RESOURCES FOR YOUR COURT

SAVE THE DATE: *LIFESAVERS 2011*

The National Conference on Highway Safety Priorities is offering its 2011 Lifesavers Conference in Phoenix, Arizona on April 27 - 29, 2011. For more information, go to www.lifesaversconference.org. The program is filled with many interesting educational sessions, as well as exhibits from traffic safety entities.



ANNUAL REPORT ON THE TEXAS JUDICIAL SYSTEM YEAR 2010

Each year the Office of Court Administration prepares the Annual Statistical Report for the Texas Judiciary. Shown on the next five pages is statistical information on municipal courts, showing an overall activity report, as well as a profile of the trial and appellate judges in the state. The entire report, as well as reports since 1996, may be accessed on the OCA web site at <http://www.courts.state.tx.us/pubs/annual-reports.asp>. The annual reports include court structure charts, information on jurisdiction, judicial qualifications, and more. Monthly activity of the municipal courts may be accessed at <http://data.courts.state.tx.us/OCA/ReportSelection.aspx>. These reports are excellent ways to compare the changes in your court's caseload with that of other municipal courts.

Texas municipal courts are to be congratulated. In FY 2010, 99.9% of the courts reported their data to OCA!

NEW OCA PUBLICATIONS

The Office of Court Administration has recently released two new publications that are available to download from the OCA website. TMCEC recommends both to municipal judges and court support personnel.

Legal Information vs. Legal Advice: Guidelines and Instructions for Clerks and Court Personnel Who Work with Self-Represented Litigants in Texas State Courts is designed for clerks and court personnel who provide telephone and counter assistance to help them distinguish between legal information and legal advice. It contains a one-page list of what clerks and court personnel can and cannot do which is suitable for placement in a window or bulletin board for the public to read. The material can be accessed at <http://www.courts.state.tx.us/pubs/LegalInformationVSLegalAdviceGuidelines.pdf>.

The Texas Family Violence Bench Book (December 2010 Edition) is a comprehensive reference guide with hyperlinks to online resources that are discussed in the chapter's comments section.

As stated in the Preface of the book, its purpose is to "to set out the Texas and federal laws on family violence and to consider them with the impartial and unbiased view expected of a judge." The Bench Book can be accessed at <http://www.courts.state.tx.us/pubs/Manuals/judges/DomesticViolenceBenchBook.doc>.

Many other resources are located on the OCA website or accessed through links on its pages. TMCEC suggests that municipal judges and court personnel browse the website regularly: www.courts.state.tx.us.



MUNICIPAL COURT ACTIVITY

SOURCE: OFFICE OF COURT ADMINISTRATION, ANNUAL REPORT FOR THE TEXAS JUDICIARY 2010

Municipal Courts

Cases Filed— More than 7.5 million cases were filed in the state’s municipal courts in 2010, a decrease of 3.7 percent from the number of new cases filed the previous year. Traffic and parking cases constituted 82.7 percent of new cases filed.

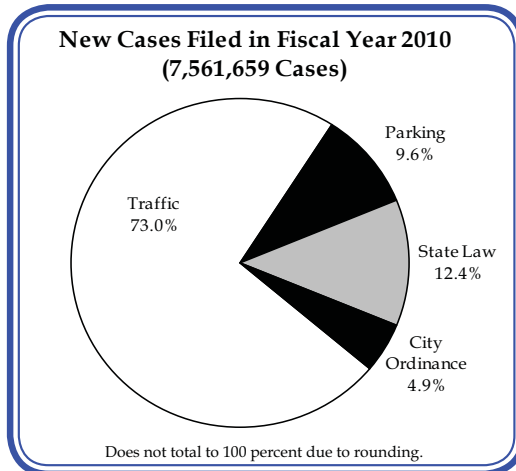
The 10 most populous cities, representing 42.4 percent of the state’s population living in cities and towns, accounted for 49.1 percent of all cases filed in municipal courts. Of the 10 most populous cities, Plano (population 273,611) had the lowest per capita filing rate (.24) and Houston (population 2,257,926) had the highest per capita filing rate (.63). Statewide, the per capita rate of cases filed in municipal courts was .39 cases. The highest per capita filing rate, 34.0, occurred in Westlake (population 246). The second highest per capita filing rate, 13.1, occurred in Estelline (population 152). These rates were considerably higher than the rates in all other cities in the state.

Clearance Rates— Municipal courts disposed of 6,852,239 cases in 2010—a decline of 1.4 percent from the previous year. Because the number of dispositions did not decline as much as the number of new cases filed decreased, the statewide clearance rate for municipal court cases rose to 90.6 percent (compared with 88.5 percent the year before). By case type, traffic cases had the highest clearance rate (92.9 percent), while city ordinance cases had the lowest clearance rate (78.8 percent).

Manner of Disposition— In 2010, municipal courts disposed of nearly 5.8 million traffic and parking cases. The largest share of these cases, 34.9 percent, were disposed of by payment of a fine (without appearing before a judge) or by a bond forfeiture. Approximately 18 percent were disposed of after a bench trial or other appearance before a judge, 17.9 percent were disposed of after completion of deferred disposition or a driving safety course, and only 0.1 percent were disposed of by a jury trial.

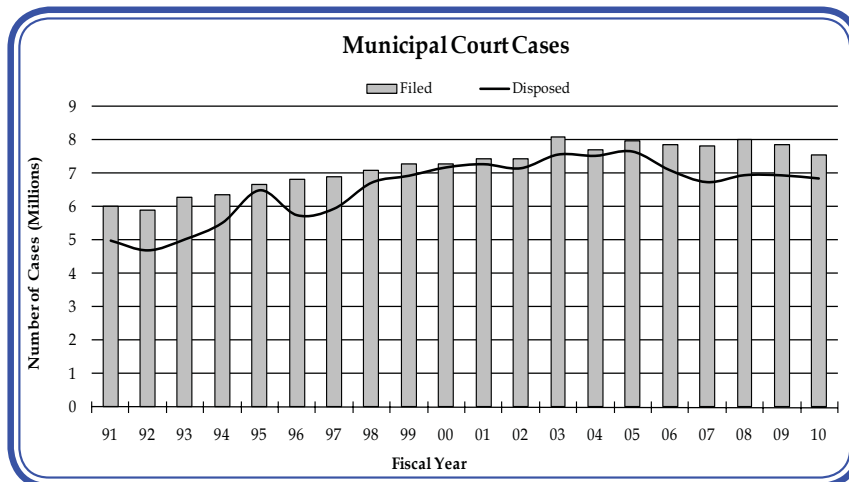
Municipal courts also disposed of more than one million state law and city ordinance cases (i.e., non-traffic cases). Approximately 34 percent of these cases were disposed of by payment of a fine or by bond forfeiture. While the jury trial rate for these cases (0.1 percent) was similar to the rate for traffic and parking cases, defendants in state law and city ordinance cases were more likely to have a bench trial or other appearance before the judge (25.7 percent) to dispose of the case.

Overall, guilty findings were made in almost all (97.0 percent) of the 1,296,374 cases that were not dismissed

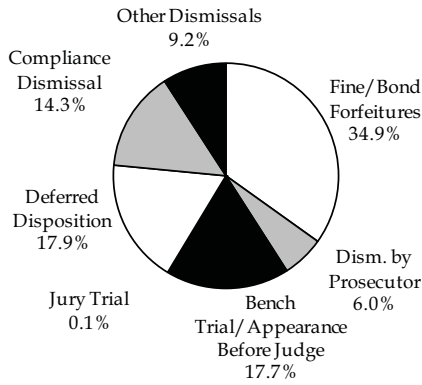


**Filings per Capita
FY 2010**

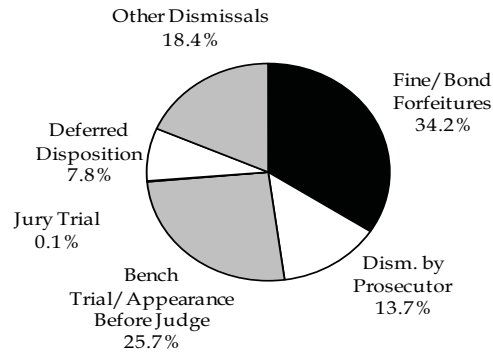
Cities with Highest Filings per Capita	Filings per Capita in 5 Most Populous Cities
Westlake - 34.0	Houston - .63
Estelline - 13.1	San Antonio - .31
Cumby - 6.4	Dallas - .28
Palmer - 6.0	Austin - .48
Itasca - 5.6	Fort Worth - .57
Statewide - .39	



Disposition of Traffic and Parking Cases
(5,793,723 Cases)



Disposition of Non-Traffic Cases
(1,058,516 Cases)



Charts do not total to 100 percent due to rounding.

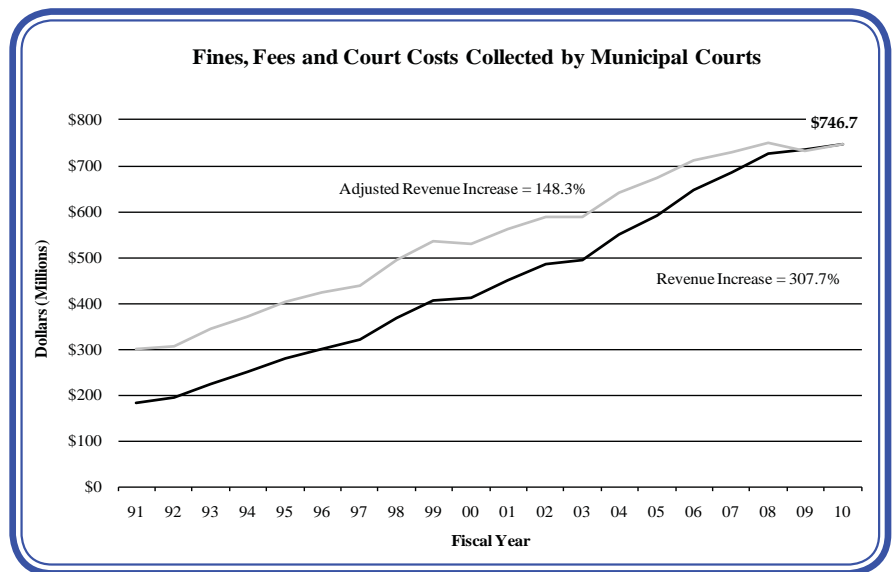
and went to bench trial or were otherwise disposed of by an appearance before the judge.¹ In contrast, guilty verdicts accounted for 75.2 percent of the 5,107 cases that went to jury trial.

Juvenile Case Activity – Juvenile cases filed in municipal courts decreased 9.8 percent from the previous year to 274,300 – the lowest number reported since 2002. Transportation Code (traffic) cases accounted for 43.0 percent of the juvenile cases filed in 2010. The number of cases filed under most of the juvenile case categories has fluctuated over the years. Since 2004, however, cases involving driving under the influence of alcohol declined an average of 7.3 percent per year.

Magistrate Activity – In 2010, municipal courts issued 9,529 search warrants, more than 2.8 million arrest warrants, 10,440 magistrate orders for emergency protection, and 311,341 magistrate warnings to adults. Search warrants, arrest warrants, emergency protective orders, and mental health hearings generally increased over the past decade. Magistrate activity in juvenile cases, however, generally declined over the decade. Certifications of juvenile statements declined 57.3 percent between 2001 and 2010 (from 1,626 in 2001 to 694 in 2010), and warnings administered to juveniles declined 66.2 percent (from 5,186 in 2001 to 1,755 in 2010). From 2009 to 2010, activity in both categories dropped sharply (by approximately 19 percent).

Court Collections – The amount of fines, fees and court costs collected by municipal courts generally increased over the last 20 years. In 2010, the courts collected approximately \$747 million – an increase of 1.7 percent from the previous year. The amount collected in 2010 was 307.7 percent higher than that collected 20 years previously in 1991, or 148.3 percent higher when adjusted for inflation.²

Excluding cases dismissed prior to trial or at trial, the amount collected per disposition averaged approximately \$130.



1. Guilty and *nolo contendere* pleas are included in the “Trial by Judge” category in the Municipal Court Activity Report.
2. Using Consumer Price Index Conversion Factors, <http://oregonstate.edu/cla/polisci/download-conversion-factors>.

Activity Report for Municipal Courts

September 1, 2009 to August 31, 2010

99.9 Percent Reporting Rate 10,991 Reports Received Out of a Possible 11,004					
	Traffic Misdemeanors		Non-Traffic Misdemeanors		REPORTED TOTALS
	Non - Parking	Parking	State Law	City Ordinance	
	NEW CASES FILED	5,521,029	729,572	938,977	
DISPOSITIONS:					
Dispositions Prior to Trial:					
<i>Bond Forfeitures</i>	35,063	2,245	9,137	1,927	48,372
<i>Fined</i>	1,514,893	468,496	266,277	84,435	2,334,101
<i>Cases Dismissed</i>	313,359	36,618	95,444	49,204	494,625
Total Dispositions Prior to Trial	1,863,315	507,359	370,858	135,566	2,877,098
Dispositions at Trial:					
<i>Trial by Judge</i>					
Guilty	860,913	127,130	198,478	70,552	1,257,073
Not Guilty	15,834	20,198	2,060	1,209	39,301
<i>Trial by Jury</i>					
Guilty	2,660	50	645	488	3,843
Not Guilty	812	11	244	197	1,264
<i>Dismissed at Trial</i>	525,226	5,557	130,996	64,256	726,035
Total Dispositions at Trial	1,405,445	152,946	332,423	136,702	2,027,516
Cases Dismissed After:					
<i>Driver Safety Course</i>	451,432	--	--	--	451,432
<i>Deferred Disposition</i>	580,639	2,786	62,202	20,765	666,392
<i>Proof of Financial Responsibility</i>	340,655	--	--	--	340,655
<i>Compliance Dismissal</i>	489,146	--	--	--	489,149
Total Cases Dismissed After	1,861,872	2,786	62,202	20,765	1,947,625
TOTAL DISPOSITIONS	5,130,632	663,091	765,483	293,033	6,852,239
COMMUNITY SERVICE ORDERED	193,955	880	49,162	15,945	259,942
CASES APPEALED	10,007	210	1,788	571	12,576
JUVENILE ACTIVITY:					
Transportation Code Cases Filed					118,037
Non-Driving Alcoholic Beverage Code Cases Filed					36,047
DUI of Alcohol Cases Filed					2,592
Health & Safety Code Cases Filed					7,717
Failure to Attend School Cases Filed					18,252
Education Code Cases Filed					9,315
Violation of Local Daytime Curfew Ordinance Cases Filed					10,213
All Other Non-Traffic Fine-Only Cases Filed					72,127
Waiver of Jurisdiction of Non-Traffic Cases					4,471
Referred to Juvenile Court for Delinquent Conduct					1,425
Held in Contempt, Fined, or Denied Driving Privileges					7,944
Warnings Administered					1,755
Statements Certified					694
OTHER ACTIVITY:					
Parent Contributing to Nonattendance Cases Filed					6,499
Safety Responsibility and Driver's License Suspension Hearings Held					3,740
Search Warrants Issued					9,529
Arrest Warrants Issued					
Class C Misdemeanors			2,754,839		
Felonies and Class A and B Misdemeanors			72,697		
Total Arrest Warrants Issued					2,827,536
Magistrate Warnings Given					
Class A and B Misdemeanors			227,789		
Felonies			83,552		
Total Magistrate Warnings Given					311,341
Emergency Mental Health Hearings Held					2,428
Magistrate's Orders for Emergency Protection					10,440
TOTAL REVENUE					\$746,718,456

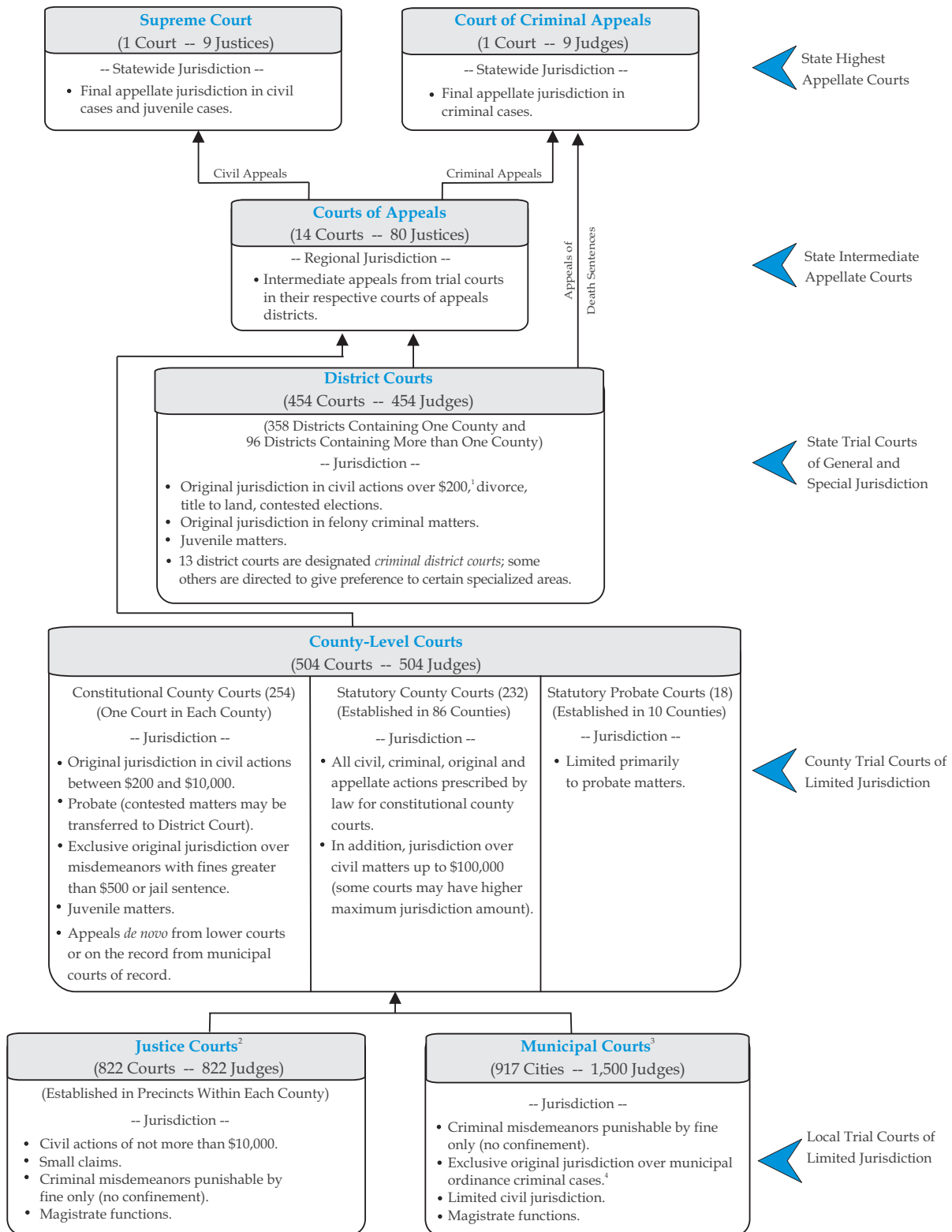
Profile of Appellate and Trial Judges*

(as of September 1, 2010)

	Supreme Court	Court of Criminal Appeals	Court of Appeals	District Courts	Criminal District Courts	County Courts at Law	Probate Courts	County Courts	Justice Courts	Municipal Courts
NUMBER OF JUDGES:										
Number of Judge Positions	9	9	80	441	13	231	18	254	822	1492
Number of Judges	9	9	80	441	13	229	18	254	822	1492
Number of Vacant Positions	0	0	0	0	0	2	0	0	0	9
Number of Municipalities w/ Courts	--	--	--	--	--	--	--	--	--	917
Cities with No Courts	--	--	--	--	--	--	--	--	--	262
AGE OF JUDGES:										
	(n=9)	(n=9)	(n=80)	(n=440)	(n=12)	(n=204)	(n=17)	(n=224)	(n=693)	(n=1197)
Mean	55	67	56	55	56	61	66	58	57	60
Oldest	65	77	73	77	66	86	79	82	87	92
Youngest	44	57	38	33	45	36	52	33	27	28
RANGE OF AGE:										
Under 25	0	0	0	0	0	0	0	0	0	0
25 through 34	0	0	0	4	0	0	0	1	9	12
35 through 44	1	0	4	49	0	22	0	11	49	145
45 through 54	5	0	24	126	5	79	1	42	151	302
55 through 64	2	5	42	200	6	71	11	98	284	401
65 through 74	1	3	10	61	1	27	4	64	164	250
Over 75	0	1	0	1	0	5	1	8	36	87
GENDER OF JUDGES:										
	(n=9)	(n=9)	(n=80)	(n=441)	(n=13)	(n=227)	(n=18)	(n=254)	(n=819)	(n=1469)
Males	7	5	46	319	9	155	14	221	540	962
Females	2	4	34	122	4	72	4	33	279	507
ETHNICITY OF JUDGES:										
	(n=9)	(n=9)	(n=79)	(n=400)	(n=12)	(n=200)	(n=16)	(n=235)	(n=652)	(n=1098)
African-American	2	0	2	17	3	8	0	2	23	58
American Indian or Alaska Native	0	0	0	1	0	0	0	0	1	10
Asian or Pacific Islander	0	0	1	2	0	0	0	0	0	9
Hispanic/Latino	2	0	10	68	0	45	3	22	126	164
White (Non-Hispanic)	5	9	66	311	9	144	13	211	502	849
Other	0	0	0	5	0	3	0	0	0	8
LENGTH OF SERVICE:										
	(n=9)	(n=9)	(n=80)	(n=441)	(n=12)	(n=229)	(n=18)	(n=252)	(n=821)	(n=1435)
Average	6 Yr 9 Mo	11 Yr 4 Mo	7 Yr 0 Mo	9 Yr 7 Mo	7 Yr 11 Mo	10 Yr 0 Mo	14 Yr 3 Mo	8 Yr 0 Mo	10 Yr 8 Mo	8 Yr 11 Mo
Longest	21 Yr 7 Mo	17 Yr 7 Mo	18 Yr 7 Mo	30 Yr 6 Mo	20 Yr 3 Mo	34 Yr 4 Mo	29 Yr 11 Mo	32 Yr 6 Mo	47 Yr 4 Mo	46 Yr 0 Mo
RANGE OF SERVICE ON THIS COURT IN YEARS:										
Under 1 Year	2	0	4	20	0	10	0	2	9	78
1 through 4	0	0	21	138	6	53	5	94	229	481
5 through 9	6	3	31	106	3	54	1	65	196	377
10 through 14	0	4	12	67	0	46	3	37	155	233
15 through 19	0	2	12	69	2	33	3	38	148	122
20 through 24	1	0	0	31	1	23	3	10	40	66
25 through 29	0	0	0	15	0	6	3	3	24	46
30 through 34	0	0	0	1	0	4	0	2	13	19
35 through 39	0	0	0	0	0	0	0	0	5	9
Over 40	0	0	0	0	0	0	0	0	1	3
FIRST ASSUMED OFFICE BY:										
	(n=9)	(n=9)	(n=80)	(n=443)	(n=12)	(n=229)	(n=18)	(n=250)	(n=821)	(n=1463)
Appointment	6 (67%)	1 (11%)	46 (58%)	175 (40%)	3 (25%)	75 (33%)	8 (44%)	49 (20%)	239 (29%)	1447 (99%)
Election	3 (33%)	8 (89%)	34 (43%)	268 (60%)	9 (75%)	154 (67%)	10 (56%)	201 (80%)	582 (71%)	16 (1%)
EDUCATION:										
HIGH SCHOOL:										
Attended	--	--	--	--	--	--	--	--	33 (5%)	18 (1%)
Graduated	--	--	--	--	--	--	--	--	648 (93%)	1166 (88%)
COLLEGE:										
Attended	0 (0%)	0 (0%)	1 (1%)	5 (1%)	0 (0%)	5 (2%)	0 (0%)	38 (17%)	165 (24%)	137 (10%)
Graduated	9 (100%)	9 (100%)	76 (95%)	383 (87%)	12 (100%)	179 (80%)	15 (83%)	145 (64%)	232 (33%)	823 (62%)
LAW SCHOOL:										
Attended	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	1 (0%)	0 (0%)	1 (0%)	3 (0%)	2 (0%)
Graduated	9 (100%)	9 (100%)	80 (100%)	439 (100%)	12 (100%)	223 (100%)	18 (100%)	32 (14%)	67 (10%)	771 (58%)
LICENSED TO PRACTICE LAW:										
Number Licensed	9 (100%)	9 (100%)	80 (100%)	441 (100%)	13 (100%)	227 (99%)	18 (100%)	31 (12%)	66 (8%)	790 (53%)
Mean Year Licensed	1984	1974	1981	1982	1981	1982	1975	1979	1984	1984
RANGE OF YEAR LICENSED:										
Before 1955	0	0	0	0	0	1	1	0	0	5
1955 through 1959	0	1	0	0	0	1	0	1	1	6
1960 through 1964	0	0	1	4	0	3	1	1	1	19
1965 through 1969	0	1	4	29	1	13	2	5	5	54
1970 through 1974	1	2	11	60	1	21	3	5	9	78
1975 through 1979	2	3	15	95	3	39	8	3	8	119
1980 through 1984	1	2	24	87	4	40	2	6	10	108
1985 through 1989	2	0	16	65	2	59	0	3	6	95
1990 through 1994	3	0	7	68	2	30	1	3	11	134
1995 through 1999	0	0	2	29	0	18	0	4	10	112
Since 2000	0	0	0	10	0	2	0	0	5	60
ORIGINALLY CAME TO THIS COURT FROM:										
Attorney Private Practice	1 (11%)	2 (22%)	23 (29%)	--	--	--	--	--	--	--
Judge of Lower Court	5 (56%)	4 (44%)	14 (18%)	--	--	--	--	--	--	--
Legislative Service	1 (11%)	3 (33%)	3 (4%)	--	--	--	--	--	--	--
Other Governmental Service	0 (0%)	0 (0%)	0 (0%)	--	--	--	--	--	--	--
PREVIOUS EXPERIENCE:										
Prosecutor	1 (11%)	5 (56%)	15 (19%)	160 (36%)	5 (38%)	91 (40%)	4 (22%)	9 (4%)	--	--
Attorney Private Practice	9 (100%)	9 (100%)	47 (59%)	285 (65%)	12 (92%)	132 (58%)	14 (78%)	27 (11%)	--	--
Judge of Lower Court	7 (78%)	2 (22%)	16 (20%)	62 (14%)	2 (15%)	33 (14%)	3 (17%)	11 (4%)	--	--
County Commissioner	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	16 (6%)	--	--

COURT STRUCTURE OF TEXAS

SEPTEMBER 1, 2010



1. The dollar amount is currently unclear.
 2. All justice courts and most municipal courts are not courts of record. Appeals from these courts are by trial *de novo* in the county-level courts, and in some instances in the district courts.
 3. Some municipal courts are courts of record -- appeals from those courts are taken on the record to the county-level courts.
 4. An offense that arises under a municipal ordinance is punishable by a fine not to exceed: (1) \$2,000 for ordinances that govern fire safety, zoning, and public health or (2) \$500 for all others.



FROM THE CENTER

18TH ANNUAL TMCEC PROSECUTORS CONFERENCE

Texas law provides that prosecutions in a municipal court shall be conducted by the city attorney or deputy city attorney. Such prosecutors have an ethical and legal obligation to not only represent the State of Texas, but to see that justice is done. In light of specific dilemmas that are unique to municipal courts, ethical and educated prosecutors are essential to the successful administration of justice in our communities. The TMCEC Annual Municipal Prosecutors Conference is the only program in the State designed to specifically assist such attorneys in obtaining and maintaining professional competence. Presentations will focus on ethics, as well as on procedural, substantive, and case law.

CLE Credit -These conferences will be submitted for CLE credit by the State Bar of Texas. We plan to provide for up to three hours of ethics at each school. The pre-conference offers an additional three hours of CLE credit. The TMCA Board adopted the \$100 fee that applies only to attorney judges and prosecutors who wish to receive CLE credit for their attendance at TMCEC programs. The fee is voluntary and is used for expenditures not allowed by the Texas Court of Criminal Appeals (membership services, salary, food, and refreshments).

If you do not wish to seek CLE credit from TMCA, you can obtain it from another provider.

Registration Fee - Municipal prosecutors may register for either of the two prosecutors' conferences. Housing, course materials, two breakfasts, and one lunch are included with the fee. The registration fee is \$350 (\$450 with CLE) if housing is requested. Municipal prosecutors who do not need housing at the conference hotel may pay a \$200 registration fee (\$300 with CLE). Prosecutors who must cancel for any reason will be charged a \$100 cancellation fee if notice of cancellation is not received at least 10 working days prior to the conference. A registration fee of \$400 (\$500 with CLE), if housing is requested, will be charged for non-municipal prosecutors or attorneys.

Addison February 16-18, 2011 Crowne Plaza Addison 14315 Midway Rd. Addison, TX 75001 912.980.8877 Register by: 2/1/11	San Antonio June 6-8, 2011 The St. Anthony Hotel 300 East Travis Street San Antonio, TX 78205 210.227.4392 Register by: 5/6/11
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MUNICIPAL COURT BAILIFFS & WARRANT OFFICERS CONFERENCE

Bailiffs and warrant officers are essential resources for judges and clerks in maintaining courtroom security, serving process for the court, and assisting in fine collection and enforcement. In FY 2010-2011, TMCEC is offering one conference for municipal court bailiffs, warrant officers, and city marshals. The conference will include courses on court security; which may allow for participants' registration fees and travel to be paid for by local court security funds. Credit of 12 TCLEOSE hours will be awarded to participants attending the conference. Four additional hours of TCLEOSE credit are offered at the optional pre-conference session held on the first day. No partial credit will be given.

Corpus Christi
April 18-20, 2011
Omni Corpus Christi
900 North Shoreline Boulevard
Corpus Christi, TX 78401
361.887.1600

The registration fee is \$150, and includes two nights lodging, course materials, breakfast and lunch on the second day, and breakfast on the final day of the conference. This conference has space for over 200 participants, but please register early; the housing deadline is **March 18, 2011**. Brochures, containing the agenda and registration form, will be mailed out in February.

Note: TMCEC is contracted by the Texas Commission on Law Enforcement (TCLEOSE) to provide training courses. Courses offered by TMCEC may be submitted to the Commission for credit.

The Texas Marshal Association's 14th Annual Conference will be held March 28-30, 2011 in San Angelo, Texas. Visit the TMA website at www.texasmarshals.org for registration information.

TMCEC & ABA TRAFFIC COURT SEMINAR: FEBRUARY 16-18, 2011 ADDISON



TMCEC is again partnering with the National Conference of Specialized Court Judges of the American Bar Association to offer a three-day program on traffic court. This seminar is approved to meet the mandatory judicial education requirement for municipal judges.

Outstanding speakers will present information on the following issues related to municipal courts in Texas: *You Be the Judge – Defenses in Traffic Cases, Evidentiary Objections & Scientific Evidence, Hot Topics/Emerging Issues and Traffic Technologies, Collateral Consequences of Criminal Convictions, Non-Citizen Issues in Traffic Court, When Judges Speak, and Public Outreach*. A mock trial will be presented.

This is the third time that TMCEC has offered this special program. Below are comments from past participants:

- *This is one of the best training seminars I have attended in which the faculty and presentations kept me interested 100%! Keep up the great work.*
- *One-topic conferences are fantastic! This was a great conference!*
- *One of the best.*
- *One of the best courses that I've attended in 18 years.*

On a 5.0 scale with 5 being outstanding, the program had an average rating of 4.73! This is one of the highest ratings for a TMCEC program for experienced judges. Those in attendance commented that they enjoyed focusing on one topic and the collegiality of the smaller group. The program is offered with funding from TxDOT, as well as the Texas Court of Criminal Appeals.

The Traffic Court Seminar will be conducted at the Crowne Plaza, 14315 Midway Road, Addison, TX 75001, 972.980.8877. Housing is provided the nights of Wednesday, February 16 and Thursday, February 17. On-site registration begins Wednesday at 11:00 a.m. Class begins at 1:00 p.m. on Wednesday and concludes Friday at 12:00 noon. The registration fee is \$50. The voluntary CLE fee is \$100.

Hotel Registration and Meals: TMCEC makes all hotel reservations from the information provided on your registration form. The Center pays the cost of the sleeping room for municipal judges. You are responsible for your incidentals. While you are attending the seminar, the Center provides some of your meals. No meals are provided on Wednesday. On Thursday, the Center provides breakfast and lunch. On Friday, the Center provides breakfast only. Guests are NOT allowed to join seminar participants at TMCEC-sponsored meals or sessions.

Cancellation Policy: You must cancel at least ten (10) working days before the seminar starts. If you don't, you will be billed for the first night's lodging costs, meal expenses, and course materials (\$160). Cancel by calling the Center (800.252.3718).

Double-Up on Judicial Education: Judges interested in attending more than one TMCEC judicial education program may do so at their own expense. If a judge plans to attend one TMCEC regional judges program in this fiscal year (September 1, 2010 - August 31, 2011) and wants to also attend a special topic program, typically the charge will be \$89 for each night in the hotel, \$74 for food, and \$25 for course materials (total of \$277). Judges will be billed after the completion of the second seminar, as prices vary at different hotels.

To Register: Mail registration form to TMCEC before February 1, 2011 to 1609 Shoal Creek Blvd., Suite 302, Austin, TX 78701.

Register by February 1, 2011

QUESTIONS? Call TMCEC at 800.252.3718 or, in Austin, at 512.320.8274.

Crowne Plaza
14315 Midway Road
Addison, Texas 75001
972.980.8877

Sponsored by:

Texas Department of Transportation (TxDOT) • Texas Municipal Courts Education Center (TMCEC) • Texas Municipal Courts Association (TMCA) • National Conference of Specialized Court Judges (NCSCJ) • American Bar Association (ABA)

Agenda*

February 16, 2011

Wednesday

- 11:00 – 1:00 p.m. **Registration**
1:00 – 1:10 p.m. **Opening Remarks**
Mr. Mark Goodner, TMCEC Program Attorney & Deputy Counsel, Austin
1:10 – 2:45 p.m. **Judicial Outreach+** (.5 hr ethics)
Hon. Douglas Saloom, Lafayette, Louisiana Municipal Court
2:45 – 3:00 p.m. **Break**
3:00 – 5:00 p.m. **You Be the Judge – Defenses in Traffic Cases**
Hon. Karen Arnold-Burger, Overland Park, Kansas Municipal Court

February 17, 2011

Thursday

- 6:45 – 8:00 a.m. **Breakfast**
8:00 – 9:00 a.m. **Hot Topics/Emerging Issues & Technologies**
Hon. Steve Smith, 361st District Court Judge, Bryan
9:00 – 9:15 a.m. **Break**
9:15 – 10:30 a.m. **When Judges Speak+** (1 hr ethics)
(Ret.) Hon. Robert K. Pirraglia, Cranston, Rhode Island
10:30 – 10:45 a.m. **Break**
10:45 – 12:00 p.m. **Evidentiary Objections/Scientific Evidence**
Hon. Steve Smith, 361st District Court Judge, Bryan
12:00 – 1:00 p.m. **Lunch**
1:00 – 3:15 p.m. **Mock Trial**
Hon. Vicki L. Carmichael, Clark Superior Court, Jeffersonville, Indiana
Hon. Karen Arnold-Burger, Overland Park, Kansas Municipal Court
(Ret.) Hon. Robert K. Pirraglia, Cranston, Rhode, Island
Hon. Steve Smith, 361st District Court Judge, Bryan
Hon. William Kelly, District Court, Kentwood, Michigan
3:15 – 3:30 p.m. **Break**
3:30 – 5:00 p.m. **Collateral Consequences of Criminal Convictions**
Hon. Karen Arnold-Burger, Overland Park, Kansas Municipal Court
Hon. William Kelly, District Court, Kentwood, Michigan

February 18, 2011

Friday

- 6:45 – 8:00 a.m. **Breakfast**
8:00 – 10:15 a.m. **Non-Citizen Issues in Traffic Court**
Hon. Karen Arnold-Burger, Overland Park, Kansas Municipal Court
Hon. William Kelly, District Court, Kentwood, Michigan
10:15 – 10:30 a.m. **Break**
10:30 – 12:00 p.m. **Case Law Update+** (.25 hr ethics)
Mr. Ryan K. Turner, General Counsel & Director of Education, TMCEC
12:00 p.m. **Adjourn**

+ Denotes course that shall be submitted for ethics MCLE credit.

* Agenda subject to change

Who should attend? In contrast to the regional seminars which expose judges to a variety of subjects, the Traffic Court Seminar will concentrate on exploring, in greater detail, legal and procedural issues involving traffic courts. This program emphasizes traffic safety issues and fills the mandatory judicial education requirements for municipal judges in 2010-2011. CLE credit has been requested.

This course offers 16-hours of judicial education. **Please plan to attend the entire program. Partial credit will not be given.** The course offers 14.5 hours of CLE (1.75 hrs ethics). The CLE fee is \$100 in addition to the \$50 registration fee.

February 16 - 18, 2011
TRAFFIC COURT SEMINAR

Crowne Plaza - Addison, Texas 75001

Register By: February 1, 2011 - \$50 Registration Fee / \$100 CLE Fee

By choosing TMCEC as your MCLE provider, attorney-judges and prosecutors help TMCA pay for expenses not covered by the Court of Criminal Appeals grant. Your voluntary support is appreciated. (For more information, see the TMCEC Academic Schedule)

Name (please print legibly): Last Name: _____ First Name : _____ MI: _____
Names you prefer to be called (if different): _____ Female/Male: _____
Position held: _____
Date appointed/Hired/Elected: _____ Years experience: _____
Emergency contact: _____

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: two nights at the Traffic Court Seminar. To share with another 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
- Hotel Arrival date: _____ Smoker Non-Smoker
- I do not need a room at the seminar.

Municipal Court of: _____ Email Address: _____
Court Mailing Address: _____ City: _____ Zip: _____
Office Telephone #: _____ Court #: _____ Fax: _____
Primary City Served: _____ Other Cities Served: _____

STATUS (Check all that apply):

- Full Time Part Time Attorney Non-Attorney Mayor (ex officio Judge)
- Presiding Judge Associate/Alternate Judge _____ Other: _____

I certify that I am currently serving as a municipal judge in the State of Texas. I agree that I will be responsible for any costs incurred if I do not cancel 10 business days prior to the conference. I agree that if I do not cancel 10 business days prior to the event that I am not eligible for a refund of the registration fee. I will first try to cancel by calling the TMCEC office in Austin. If I must cancel on the day before or day of the seminar due to an emergency, I will call the TMCEC registration desk at the conference site IF I have been unable to reach a staff member at the TMCEC office in Austin. If I do not attend the program, TMCEC reserves the right to invoice me or my city for meal expenses, course materials, and, if applicable, housing (\$85 or more plus tax per night). I understand that I will be responsible for the housing expense if I do not cancel or use my room. If I have requested a room, I certify that I work at least 30 miles from the conference site. **Payment is due with the registration form. Registration shall be confirmed only upon receipt of registration form and payment.**

Participant Signature (May only be signed by participant)

Date

PAYMENT INFORMATION

Amount Enclosed: \$50 Registration Fee or \$150 Registration & CLE Fee

- Check Enclosed (Make checks payable to TMCEC.)
- Credit Card (Complete the following; \$5.00 will be added for each registration made with credit card payment.)

Credit Card Payment:

Credit card type: _____ Amount to Charge: _____ Credit Card Number: _____ Expiration Date: _____
 MasterCard \$ _____ Name as it appears on card (print clearly): _____
 Visa _____ Authorized Signature: _____

Please return completed form with payment to TMCEC at 1609 Shoal Creek Boulevard #302, Austin, TX 78701, or fax to 512.435.6118.

2011 WEBINAR SERIES

TMCEC has changed the way we do webinars. This change will make it easier on you (the participants) to watch and allows for more creativity in the methods of presentation. Gone are the days of viewing on your computer and tying up a telephone line – with the new Adobe Connect program, you can watch and listen through your computer (provided you have speakers and the sound turned up). There will be no registration for webinars. Simply log in and watch on that day.

Webinars are now hosted on TMCEC's Online Learning Center (OLC). See the bottom of this page for more on the OLC. TMCEC has sent out, via separate mailing, further instructions on how to access the OLC to all municipal court personnel with password and login information. A brochure with more information about the scheduled webinars, and more detailed instructions on how to log on, was sent to courts in December.

• SCHEDULE •

Bicycle Laws • January 5 @ 10:00 • Presented by Mark Goodner, Program Attorney and Deputy Counsel, TMCEC (archived)

Cruelly-Treated Animal Hearings • January 12 @ 11:00 • Presented by David Johnson, Assistant City Attorney, City of Arlington (archived)

Upcoming Revisions to the OCA Monthly Report • January 20 @ 10:00 • Presenter TBD, Office of Court Administration (archived)

A Closer Look at Recent U.S. Supreme Court Decisions • January 26 @ 10:00 • Presented by Ryan Kellus Turner, General Counsel and Director of Education, TMCEC

A Closer Look at Recent Texas Court of Criminal Appeals Decisions • February 2 @ 10:00 • Presented by Ryan Kellus Turner, General Counsel and Director of Education, TMCEC

Racial Profiling: What is it? And Why Should Courts Care • February 15 @ 10:00 • Presented by Katie Tefft, Program Attorney, TMCEC

A Closer Look at Recent Case Law: Trial, Court Administration, and Prosecution • February 24 @ 10:00 • Presented by Ryan Kellus Turner, General Counsel and Director of Education, TMCEC

Immigration Regulation at the Local Level: Preemption in Three Different Flavors • March 3 @ 10:00 • Presented by Ryan Kellus Turner, General Counsel and Director of Education, TMCEC

Dangerous Dog Hearings • March 16 @ 10:00 • Presented by Marian Moseley, Presiding Judge, City of Coppell

Contempt • April 7 @ 10:00 • Presented by Peter Graham, Judge, City of Irving

Warrants: Back to Basics • April 28 @ 10:00 • Presented by Katie Tefft, Program Attorney, TMCEC

Juvenile Law Update • June 2 @ 10:00 • Presented by Mark Goodner, Program Attorney and Deputy Counsel, TMCEC

Recent Changes to the Driver Responsibility Program • July 6 @ 10:00 • Presenter TBD, Department of Public Safety

Upcoming Revisions to the OCA Monthly Report • July 26 @ 10:00 • Presenter TBD, Office of Court Administration

Implementing the Changes to the OCA Monthly Report • August 24 @ 10:00 • Presenter TBD, Office of Court Administration

Note: this webinar schedule is subject to change. Check the TMCEC Website for changes.



TMCEC's OLC: <http://online.tmcec.com>

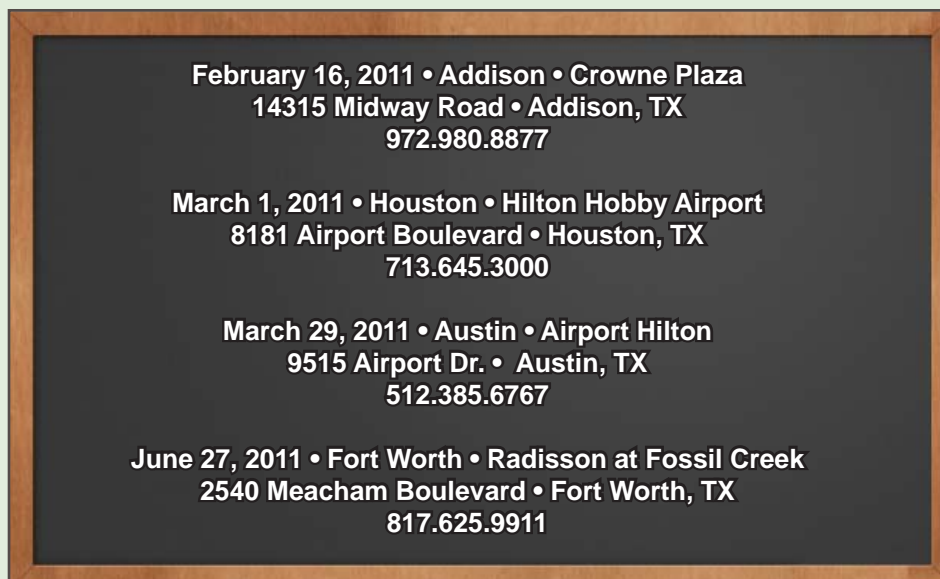
TMCEC's Online Learning Center (OLC) is open to municipal judges and court support personnel. In the early stages of development, the OLC hopes to offer a variety of professional development courses related to municipal courts. Although only webinars are available at this time, TMCEC is planning short courses for judges, clerks, bailiffs/warrant officers/marshals, and prosecutors. A logon and password is required; a letter was sent out in December with instructions on how to access and logon to the OLC.

Once logged into the TMCEC OLC, click on Webinars under the list of Available Courses in the middle of the page. Click Upcoming Webinar Schedule to view all of TMCEC's scheduled webinars. To participate in a webinar, you must first enroll in the "course." The webinar link to view the webinar will become active 30 minutes before the scheduled start time on the scheduled day. See next page for specific instructions as to how to Logon.

8-HOUR LOCAL CLERKS SERIES

In an effort to ensure that all court clerks and support personnel will have the opportunity to obtain continuing education and certification hours, TMCEC will be offering, in addition to our other regional seminars and clinics, four one-day programs in a new Local Clerks Series. These local programs are designed to meet the needs of clerks in the metroplexes that cannot be away from the court for more than one day, yet wish to receive annual training.

TMCEC will be coming to a city near you with this one-day Local Clerks Series program on the following dates:



The program begins at 8:00 a.m. and concludes at 5:00 p.m., and offers eight (8) hours towards the clerks certification program. Topics include: *DSC & Deferred Disposition*; *Alcohol Offenses in Municipal Court*; *Trends in Regulation of Wireless Communication Devices*; *Juveniles in Municipal Court*; *Social Media and the Courts*; and *Stress Management*. These programs will provide an interactive training and give you the opportunity to network and meet other clerks from your area.

WEBINAR INSTRUCTIONS

To view a TMCEC webinar, you must first log into the OLC at <http://online.tmcec.com>:

1. Type <http://online.tmcec.com> into your browser's address bar or use the link provided on the TMCEC website.
2. On the OLC home page, find the login box in the upper left corner of the page.
3. Enter your username and password and click **Login**.

To enroll in an upcoming webinar, please follow these instructions:

1. Look for the list of **Course Categories** in the middle of the page just below the welcome message.
2. Click **Upcoming Webinars** to view a full schedule. The name of the presenter, the date, and the time will be provided to the right of the title.
3. Click the **title** of the webinar you would like to attend.
4. You will see a message that says "You are about to enroll yourself as a member of this course. Are you sure you wish to do this?" and two options: Yes and No. There is no preregistration for our upcoming webinars, but you must be enrolled to view the webinar link, course materials, and most importantly, to receive credit for the webinar. Click **Yes** to enroll.

5. You are now considered enrolled in the webinar. You will see the webinar title and below the title, links for Webinar, Course Materials (there may be more than one), Evaluation, CLE Credit (if available), and Certificate of Completion.

To view the webinar, no more than 30 minutes prior to the scheduled start time, please follow these instructions:

1. Click **Webinar**.
2. The link will open a new window in your web browser. You should see the title of the webinar and two options for logging in. Choose **Enter as a Guest** and type your first and last name - exactly as you want it to appear on your certificate - into the space provided. Click **Enter Room**.
3. You will experience a short delay as the software to display the webinar is automatically installed and configured on your system. You should not be asked to download or confirm anything. When the software is configured, you should be able to view the webinar.
4. Make sure you have the sound turned up on your computer speakers as you will not be calling in on the telephone.

Look in the Webinar FAQ book on the Upcoming Webinars page of the OLC for more instructions on webinars or contact TMCEC at 800.252.3718.

2010 - 2011 TMCEC Academic Schedule At-A-Glance

Seminar	Date(s)	City	Hotel Information
Texas Association of Counties: Courts & Local Government Technology Conference	January 25-27, 2011	San Marcos	Embassy Suites 1001 McCarty Lane, San Marcos, TX
Regional Judges and Clerks Seminar	February 7-9, 2011	Addison	Crowne Plaza Addison 14315 Midway Road, Addison, TX
8-hr Local Clerks Program	February 16, 2011	Addison	Crowne Plaza Addison 14315 Midway Road, Addison, TX
ABA Judges Traffic Court Technology Conference	February 16-18, 2011	Addison	Crowne Plaza Addison 14315 Midway Road, Addison, TX
Prosecutors Seminar	February 16-18, 2011	Addison	Crowne Plaza Addison 14315 Midway Road, Addison, TX
New Judges and Clerks Orientation	February 23, 2011	Austin	TMCEC 1609 Shoal Creek Blvd. Ste. 302, Austin, TX
Regional Judges Seminar	February 27-March 1, 2011	Galveston	San Luis Resort and Spa 5222 Seawall Blvd., Galveston, TX
8-hr Local Clerks Program	March 1, 2011	Houston	Hilton Houston Hobby Airport 8181 Airport Boulevard, Houston, TX
Regional Judges and Clerks Seminar	March 6-8, 2011	Houston	Omni Westside Hotel 13210 Katy Freeway, Houston, TX
One Day Clinic: Warrants	March 23, 2011	Austin	TMCEC 1609 Shoal Creek Blvd. Ste. 302, Austin, TX
8-hr Local Clerks Program	March 29, 2011	Austin	Hilton Austin - Airport 9515 Airport Dr. Austin, TX
One Day Clinic: Code Enforcement	April 6, 2011	Austin	TMCEC 1609 Shoal Creek Blvd. Ste. 302, Austin, TX
Regional Judges and Clerks Seminar	April 11-13, 2011	Amarillo	Ambassador Hotel 3100 W IH-40, Amarillo, TX
Regional Clerks & Bailiffs/Warrant Officers Seminar	April 18-20, 2011	Corpus Christi	Omni Corpus Christi Hotel Bayfront Tower 900 North Shoreline Blvd., Corpus Christi, TX
Regional Clerks Seminar	May 1-3, 2011	S. Padre Island	Isla Grand Beach Resort 500 Padre Blvd., South Padre Island, TX
Regional Attorney Judges Seminar	May 8-10, 2011	S. Padre Island	Isla Grand Beach Resort 500 Padre Blvd., South Padre Island, TX
Regional Non-Attorney Judges Seminar	May 10-12, 2011	S. Padre Island	Isla Grand Beach Resort 500 Padre Blvd., South Padre Island, TX
New Judges and Clerks Orientation	May 18, 2011	Austin	TMCEC 1609 Shoal Creek Blvd. Ste. 302, Austin, TX
Traffic Safety Conference	May 22-24, 2011	San Antonio	Omni San Antonio at the Colonnade 9821 Colonnade Blvd., San Antonio, TX
Prosecutors & Court Administrators Seminar	June 6-8, 2011	San Antonio	St. Anthony Hotel 300 E. Travis, San Antonio, TX
Regional Judges and Clerks Seminar	June 13-15, 2011	Odessa	MCM Elegante 5200 East University, Odessa, TX
8-hr Local Clerks Program	June 27, 2011	Fort Worth / Arlington	Radisson Fort Worth Fossil Creek 2540 Meacham Boulevard, Fort Worth, TX
One Day Clinic: Juveniles	June 29, 2011	Austin	TMCEC 1609 Shoal Creek Blvd. Ste. 302, Austin, TX
New Judges Seminar	July 18-22, 2011	Austin	Omni Southpark 4140 Governor's Row, Austin, TX
New Clerks Seminar	July 18-21, 2011	Austin	Omni Southpark 4140 Governor's Row, Austin, TX
Legislative Update - Lubbock	August 10, 2011	Lubbock	Overton Hotel 2322 Mac Davis Ln, Lubbock, TX
Legislative Update - Houston	August 16, 2011	Houston	Omni Hotel Houston 4 Riverway, Houston, TX
Legislative Update - Austin	August 19, 2011	Austin	Omni Southpark 4140 Governor's Row, Austin, TX

**TEXAS MUNICIPAL COURTS EDUCATION CENTER
FY11 REGISTRATION FORM**

Conference Date: _____
Conference Site: _____

Check one:

- | | | |
|--|---|--|
| <input type="checkbox"/> New, Non-Attorney Judge (\$200) | <input type="checkbox"/> Traffic Safety Conference - Judges & Clerks (\$50) | <input type="checkbox"/> Prosecutor not seeking CLE/no room (\$200) |
| <input type="checkbox"/> New Clerk program (\$200) | <input type="checkbox"/> Clerk/Court Administrator (\$50) | <input type="checkbox"/> Prosecutor seeking CLE/no room (\$300) |
| <input type="checkbox"/> Non-Attorney Judge (\$50) | <input type="checkbox"/> Bailiff/Warrant Officer* (\$150) | <input type="checkbox"/> Prosecutor not seeking CLE credit (\$350) |
| <input type="checkbox"/> Attorney Judge not seeking CLE credit (\$50) | <input type="checkbox"/> Court Administrator Seminar - June (\$100) | <input type="checkbox"/> Prosecutor seeking CLE credit (\$450) |
| <input type="checkbox"/> Attorney Judge seeking CLE credit (\$150) | <input type="checkbox"/> Legislative Update (\$100) | <input type="checkbox"/> CoLoGo (\$150/\$175) |

By choosing TMCEC as your MCLE provider, attorney-judges and prosecutors help TMCA pay for expenses not covered by the Court of Criminal Appeals grant. Your voluntary support is appreciated. (For more information, see the TMCEC Academic Schedule)

Name (please print legibly): Last Name: _____ First Name : _____ MI: _____
 Names you prefer to be called (if different): _____ Female/Male: _____
 Position held: _____
 Date appointed/Hired/Elected: _____ Years experience: _____
 Emergency contact: _____

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 new judges/clerks seminars, three nights at the assessment clinics, and two nights at the regional seminars. To share with another 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
- Arrival date: _____ Smoker Non-Smoker
- I do not need a room at the seminar.

Municipal Court of: _____ Email Address: _____
 Court Mailing Address: _____ City: _____ Zip: _____
 Office Telephone #: _____ Court #: _____ Fax: _____
 Primary City Served: _____ Other Cities Served: _____

STATUS (Check all that apply):

- | | | | | |
|--|--|---|---------------------------------------|---|
| <input type="checkbox"/> Full Time | <input type="checkbox"/> Part Time | <input type="checkbox"/> Bailiff/Warrant Officer/Marshal* | <input type="checkbox"/> Court Clerk | <input type="checkbox"/> Deputy Court Clerk |
| <input type="checkbox"/> Presiding Judge | <input type="checkbox"/> Attorney | <input type="checkbox"/> Non-Attorney | <input type="checkbox"/> Prosecutor | <input type="checkbox"/> Mayor (ex officio Judge) |
| <input type="checkbox"/> Court Administrator | <input type="checkbox"/> Associate/Alternate Judge | <input type="checkbox"/> Justice of the Peace | <input type="checkbox"/> Other: _____ | |

***Bailiffs/Warrant Officers/Marshals:** Municipal judge's signature required to attend Bailiffs/Warrant Officers programs.

Judge's Signature: _____ Date: _____
 Municipal Court of: _____ TCLEOSE PID #: _____

I certify that I am currently serving as a municipal judge, 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 10 business days prior to the conference. I agree that if I do not cancel 10 business days prior to the event that I am not eligible for a refund of the registration fee. I will first try to cancel by calling the TMCEC office in Austin. If I must cancel on the day before or day of the seminar due to an emergency, I will call the TMCEC registration desk at the conference site IF I have been unable to reach a staff member at the TMCEC office in Austin. If I do not attend the program, TMCEC reserves the right to invoice me or my city for meal expenses, course materials, and, if applicable, housing (\$85 or more plus tax per night). I understand that I will be responsible for the housing expense if I do not cancel or use my room. If I have requested a room, I certify that I work at least 30 miles from the conference site. **Payment is due with the registration form. Registration shall be confirmed only upon receipt of registration form and payment.**

Participant Signature (May only be signed by participant)

Date

PAYMENT INFORMATION

- Check Enclosed (Make checks payable to TMCEC.)
 Credit Card (Complete the following; \$5.00 will be added for each registration made with credit card payment.)

Credit Card Payment: Amount to Charge: _____ Credit Card Number _____ Expiration Date _____

Credit card type: \$ _____ Name as it appears on card (print clearly): _____

MasterCard _____

Visa _____

Authorized Signature: _____

Please return completed form with payment to TMCEC at 1609 Shoal Creek Boulevard #302, Austin, TX 78701, or fax to 512.435.6118.

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

HELP US HELP YOU: GUIDELINES FOR 800 LINE CALLS

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

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

If you do call, please be patient. Your call will be returned in the order it is received. However, due to the high volume of telephone calls received and the importance of other services provided by the Center (e.g., program development, publications, court visits), your calls may not be returned immediately. We do make every effort to return calls within 24 hours.