

# Municipal Court Recorder

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## Contemplating Contempt

### Municipal Court's General Authority to Impose Criminal Contempt Sanctions

by Lois Wright, TMCEC Program Attorney

Statutorily, the contempt power of all courts in Texas grants them authority over those powers necessary to control proceedings and to ensure that they are conducted with dignity in an orderly and expeditious manner.<sup>1</sup> To ensure enforcement of those duties, the court may utilize its authority to hold a violator in contempt of court. The general contempt provisions are codified under Section 21.002 of the Texas Government Code.<sup>2</sup>

There are two general types of contempt: civil, or coercive contempt used to compel a specific object from the contemnor, and criminal or punitive contempt. Criminal contempt

may be further classified into two distinct types: direct and constructive. Direct contempt involves disobedience or disrespect of the court's authority and is committed in the presence of the court.<sup>3</sup> Constructive contempt requires testimony or evidence to establish its existence, since it occurs outside the presence of the court.<sup>4</sup> The failure to comply with a valid court order would most often be classified as constructive contempt.

#### An Expansive Discovery

Last month, the TMCEC staff stumbled upon one of those hidden gems that it had never before

contemplated. Section 21.002(h), Texas Government Code, limits the court's ability to confine a contemnor "notwithstanding any other law" to no more than 18 months in jail, quite an expansion of municipal and justice courts' original authority.

Specifically, the statute contemplates that contempt power is limited to:

1. 18 months, including three or more periods of confinement for contempt arising out of the same matter that equal a cumulative total of 18 months, if the confinement is for criminal contempt; or
2. The lesser of 18 months or the

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## Ethics of CDL Masking

by John Vasquez, Municipal Judge, Austin

Effective September 1, 2003, holders of a Commercial Driver's License (CDL) are no longer eligible for deferral of moving violations by completion of a Driver's Safety Course (DSC) or deferred disposition. Ineligibility for deferral of traffic offenses could be devastating to the holder of a CDL.

In 1999, Congress created a new federal agency to improve commercial vehicle safety, the Federal Motor Carrier Administration (FMCSA). In authorizing the creation of the

FMCSA, Congress found that the rate, number and severity of crashes involving commercial motor carriers was not acceptable.<sup>1</sup>

The FMCSA tightens laws controlling the drivers of commercial motor vehicles. One provision of the MCSA prohibits the states from masking or deferring traffic violations of CDL holders.<sup>2</sup> The Congressional Record clearly expresses Congress' intent to require every state to maintain a

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## Texas Municipal Courts Education Center

1609 Shoal Creek Boulevard, Suite 302  
Austin, Texas 78701  
512/320-8274 or 800/252-3718  
Fax: 512/435-6118  
Website: www.tmcec.com

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# AROUND THE STATE

## New TMCA/TMCEC Officers Announced

At the July 22, 2006 meeting of the Board of the Texas Municipal Courts Association, the election results of the TMCA officers and directors were ratified and announced for FY07. The new terms for the officers and directors begin September 1, 2006.

President - Judge Robin A. Ramsay (Denton)

The following statewide officers were elected:

President-Elect - Judge Brian Holman (Lewisville)

First Vice President - Judge Robert Doty (Lubbock)

Second Vice President - Judge Ninfa Mares (Fort Worth)

Secretary - Ms. Leisa Hardin (Crowley)

Treasurer - Judge Robert C. Richter (Missouri City)

The following even-numbered regions elected a member from that specific region to represent that region on the Board of Directors for a two-year term:

Region 2 - Judge Stewart Milner (Arlington)

Region 4 - Judge Elaine Coffman (Athens)

Region 6 - Judge Walter Dick Kettler (Beverly Hills)

Region 8 - Judge Donna Starkey (Alvin)

Region 10 - Judge Steven Kidder (Victoria)

The TMCEC staff wishes to thank the following persons for their conscientious work on the Board in recent years. Each individual brought a unique perspective to the board meetings, and their judgment, temperament and enthusiasm were of great value to the board and TMCEC staff.

Judge Dan Francis (Robinson) - President (FY04-05), Past President (05-06), President Elect (03-04), and Region Director from (1999-2003).

Judge George Bill Robinson (Yorktown) - Region 10 Director (2002-2006).





# FROM THE GENERAL COUNSEL

## Ryan Kellus Turner

### The Calvary Has Arrived!

In terms of the legal staff, 2006 has truly been a year of change and transition at TMCEC. While we began January short-handed, three-quarters into the year, the “law department” is now fully staffed. In fact, we are “new and improved.” For the first time in the organization’s history, the Center has three full-time attorneys.

Last year, the TMCEC Board of Directors and the Texas Court of Criminal Appeals approved the conversion of an existing position (responsible for coordinating the bailiffs/warrant officers program) into a new program attorney position. Last year, the Center received 15,000 legal calls on the 800-line. That number has proportionally increased with the number of municipal judges, municipal courts and court personnel. The staff that responded to calls on the 800-line (that would be Margaret Robbins and me) welcomed the addition of a new staff attorney.

Lois Wright was hired in April to fill this position. Right out of law school (she graduated from the University of Texas last December), and on the heels of the bar exam (she found out she passed while we were at the South Padre Island schools), we spent the greater part of this summer submerging Lois in all things criminal law and municipal court. Notably, Lois was so eager to get into the work force that she finished both her undergraduate and legal education in FIVE years.

During a time in which our organization’s energy reserve has been on the wane, Lois has been a real boost. She is energetic, charming and an absolute joy. She is a great writer and has some wonderful ideas for new projects that will, no doubt, be of benefit to you.

As excited as we were about filling the “new attorney” slot, since December when Tiffany Dowling left the organization to join the Travis County Attorney’s Office, the Program Attorney/Deputy Counsel position had yet to be filled. This is the position that I held prior to becoming General Counsel. Job duties include coordinating the judicial education program. Though it took eight months to find the right person, we are excited to welcome Meichihko Proctor to the team.

Meichihko brings a wealth of education and experience to the Center. Prior to attending law school, while earning her Master’s degree at Texas Tech, she worked for the City of Lubbock as special aide and speechwriter. (Side note: In high school, Meichihko was the 5A UIL Champion in Persuasive Speaking.) After earning her law degree from St. Mary’s University, she worked for the Texas Municipal League while waiting for her bar results. She has prosecuted in Tom Green County and for the City of Plano. She comes to us from the Austin law firm of Bickerstaff, Heath, Pollan, & Carroom where she practiced municipal law.

Meichihko is no stranger to municipal court or to municipal government. Nor is she a stranger to the classroom. While in Plano she taught as an adjunct professor at Colin County Community College. This fall she will be teaching as an adjunct at Huston-Tillotson University here in Austin.

TMCEC is fortunate to have the talents of these attorneys. Their energy and presence brings a much needed element to the work at hand. When you get a chance, please welcome them. (For fun, we had them write each other’s biographical statements contained on the back page).

We appreciate all of the individuals who expressed interest in the positions. There were a lot of applicants. A special word of thanks to Judge Robin Ramsay of Denton who chaired the Personnel Committee and to all of its members who took the time to assist the Center in conducting interviews and providing feedback: Judge Dan Francis of Robinson, Ms. Leisa Hardin, Court Administrator, City of Crowley, Judge Dick Kettler, City of Beverly Hills, Judge Phyllis Mathison, City of Bastrop, Ms. Luanne Petrash, Court Administrator, City of Webster, Judge Robert Richter, City of Missouri City, and Judge Denn Whalen, City of Odessa.

period from the date of confinement to the date the person complies with the court order that was the basis of the finding of contempt, if the confinement is for civil contempt.

The staff was puzzled by this 2003 addition to the contempt statute and its apparent disregard for the justice and municipal courts that were originally limited in their contempt powers to the three-day confinement and \$100 fine. Our questions became: *Was this statute intended to apply to municipal courts?* More importantly: *Does the statute apply to municipal courts regardless of the legislative intent?*

### **Intended Application to Municipal Court**

After consulting the Senate Jurisprudence Committee hearings considering this statutory proposal, it became apparent that the drafters of the statutory language had not considered the fact that 1) not all courts had maximum contempt confinement limits of six months, and 2) Section (h) as implemented trumps all other laws governing contempt limits in every court in the State.

The committee obviously intended for the amendment to be a safeguard on the contempt power, similar to the limits imposed by the federal government, so that contemnors could no longer be incarcerated indefinitely. For district courts, county courts and county courts at law, contempt power was formerly limited to a fine of not more than \$500 and confinement of not more than six months. One committee speaker specifically referred to that six-month limit as the “current law,” and explained that the bill was intended to prevent the combination

of more than three of those six-month time periods as contempt sanctions. In listening to the committee hearings, one thing is certain: municipal and justice courts were never mentioned during the drafting of this legislation.

### **Actual Application to Municipal Courts**

House Bill 346 passed, and became effective June 20, 2003. As read, Section (h) does not distinguish municipal or justice courts from the other courts, so according to the Code Construction Act, the statute would apply to all courts. Moreover, since it was enacted more recently than conflicting statutes, Section (h) should be read to prevail over the inconsistent portions of former statutes.

In pertinent part, the language reads: “18 months, including three **or more** periods of confinement for contempt arising out of the same matter that equal a cumulative total of 18 months.” Let’s do some math. Three six-month periods equal 18 months, just as 180 three-day periods could equal 18 months. Certainly it might sound unlikely that a court would hold someone in contempt for 180 separate acts, but it also sounds like the basis for some mouth-watering municipal lore.

The clincher is the introductory portion of Section (h): “Notwithstanding any other law...”. *Notwithstanding* used in drafting is a common synonym for “despite” or “although,” and Bryan Garner’s *A Dictionary of Modern Legal Usage*, 2<sup>nd</sup> Edition, likens, *notwithstanding any other provision of law*, to an ungainly phrase used to override any arguably inconsistent provisions. Considering a literal interpretation of the statute, municipal courts are not only subject to the limitations of this provision,

but they are bound to it over all other existing statutes.

### **So Should Municipal Courts Use Their Section (h) Power?**

On January 27, 2006, the Court of Appeals in Waco court handed down *Gonzales v. State*, an unpublished decision involving a defendant who violated a condition of her bond, prompting the district court judge to hold her in contempt.<sup>5</sup> Specifically, Gonzales submitted diluted urine samples to her probation department and lied about the conduct in open court. Although the judge wanted to hold Gonzales in contempt for the perjury, the appellate court held that the court was bound by the specific contempt guidelines for her specific violation of a condition of bond, codified in Article 7.18 of the Code of Criminal Procedure. That statute limits contempt in those cases to the statutory maximums under 21.002(c), the general provision for municipal and justice courts: a \$100 fine and a three-day confinement.<sup>6</sup> Never is Section (h) even contemplated by the court to expand the jurisdiction of the district court.

Does Section 21.002(h), G.C., expand your right as a municipal judge to hold someone on multiple counts of contempt for up to 18 months? Technically, yes; but, considering the stakes, no one is eager to be the first to test it. Given the legislative intent, or more practically, the legislative oversight, coupled with an absence of positive case law on the issue, it would be best to wait for clarification by case law or statutory amendment by the Legislature. Until then, remember that courts can’t go wrong following more readily tested methods to ensure that court proceedings are conducted expeditiously, with dignity and order.

You can listen to and view the content of this hearing and other archived hearings at the Texas Senate website, [www.senate.state.tx.us](http://www.senate.state.tx.us). The hearing herein referenced is located under the Jurisprudence Committee, May 07, 2003, at 42:52.

<sup>1</sup> Section 21.001(a) & (b), G.C.

<sup>2</sup> Section 21.002, G.C.

<sup>3</sup> *In re Johnson*, 996 S.W.2d 430, 433 (Tex. App.—Beaumont 1999, no pet.).

<sup>4</sup> *Ex parte Daniels*, 722 S.W.2d 707, 709 (Tex. Crim. App. 1987).

<sup>5</sup> *Gonzalez v. State*, No. 10-05-00405-CR, (Tex. App.—Waco 2006).

<sup>6</sup> Article 7.18, C.C.P.

### Masking continued from page 1

complete driving record of all traffic violations, including non-commercial vehicle violations committed by CDL holders.<sup>3</sup>

To enforce this requirement and other new mandates, Congress authorized the FMCSA to withhold motor carrier assistance program funds from non-complying states.

Effective September 1, 2002, the U.S. Department of Transportation issued new rules prohibiting states from masking convictions of CDL holders:

§384.226 Prohibition on masking convictions.

The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the State where the driver is licensed in another State.<sup>4</sup>

In Texas, CDL holders became ineligible for mandatory DSC and the deferral of traffic violations on September 1, 2003. Consequently, municipal and justice court judges must now deal with CDL holders who wish to continue their employment and support their families. Most likely, their only option is to take the traffic violations to trial.

In some cases, judges are being asked to permit the circumvention of Texas law. Some of the more common ways to mask traffic charges against CDL holders include:

1. Changing the charge from a moving violation to a non-moving violation;
2. Permitting the defendant to pay a Failure to Appear charge then dismissing the traffic violation; and
3. Dismissal of the traffic charge upon the defendant making a contribution equal to the fine amount to the jurisdiction.

Notably, the Legislature has now changed the law to prevent CDL holders from temporarily dropping their CDL license in order to qualify for a deferred disposition.

Effective September 1, 2005, the status of the driver at the time of the issuance of the citation determines whether the driver can qualify for mandatory DSC or deferred disposition.

Judges may be asked to grant leniency to a CDL holder. You must be careful in these circumstances not to approve the circumvention of Texas law. If you are asked to mask a traffic violation charged against a CDL holder, consider your ethical obligation. What might be the consequences of masking a violation?

### **The Commercial Driver's License**

A working knowledge of CDLs and the regulation of CDL holders is

essential to understanding the court's role in a much larger federal landscape.

The purpose of the Commercial Motor Vehicle Act of 1986 was to improve traffic safety by removing unsafe and unqualified commercial drivers from the road. The licensing guidelines and standards issued by the U.S. Department of Transportation were adopted by all the states by April 1992. When the FMCSA of 1999 passed the rules governing CDL holders, state laws were tightened substantially.

In accordance with federal regulations and federal law, Texas law now establishes three classes of CDLs:

- (a) The department may issue a Class A, Class B or Class C commercial driver's license.
- (b) Class A covers a combination of vehicles with a gross combination weight rating of 26,001 pounds or more, if the gross vehicle weight rating of the towed vehicle or vehicles exceeds 10,000 pounds.
- (c) Class B covers:
  - (1) a single vehicle with a gross vehicle weight rating of 26,001 pounds or more;
  - (2) a single vehicle with a gross vehicle weight rating of 26,001 pounds or more towing a vehicle with a gross vehicle weight rating of 10,000 pounds or less; and
  - (3) a vehicle designed to transport 24 passengers or more, including the driver.
- (d) Class C covers a single vehicle or combination of vehicles not described by Subsection (b) or (c) that is:
  - (1) designed to transport 16-23 passengers, including the driver; or
  - (2) used in the transportation of hazardous materials that

require the vehicle to be placarded under 49 C.F.R. Part 172, Subpart F.

- (e) The holder of a commercial driver's license may drive any vehicle in the class for which the license is issued and lesser classes of vehicles except a motorcycle or moped. The holder may drive a motorcycle only if authorization to drive a motorcycle is shown on the commercial driver's license and the requirements for issuance of a motorcycle license have been met.<sup>5</sup>

As required by the FMCSA, Texas law also requires that CDL holders who drive certain types of loads obtain special endorsements:

- (a) The department may issue a commercial driver's license with endorsements:
- (1) authorizing the driving of a vehicle transporting hazardous materials, subject to the requirements of Title 49 C.F.R. Part 1572;
  - (2) authorizing the towing of a double or triple trailer or a trailer over a specified weight;
  - (3) authorizing the driving of a vehicle carrying passengers;
  - (4) authorizing the driving of a tank vehicle;
  - (5) representing a combination of hazardous materials and tank vehicle endorsements; or
  - (6) authorizing the driving of a school bus, as defined by Section 541.201.
- (b) The holder of a commercial driver's license may not drive a vehicle that requires an endorsement unless the proper endorsement appears on the license.
- (c) A person commits an offense if

the person violates Subsection (b). An offense under this section is a Class C misdemeanor.<sup>6</sup>

Depending on the type of violations, CDL holders can be disqualified from driving commercial motor vehicles for periods of 60 days, 120 days, one year, three years, and life. Texas Transportation Code §522.081. A CDL holder who has as few as two convictions for "serious traffic violations" can be suspended from driving commercial motor vehicles. Texas law defines "serious traffic violations" as:

- (A) a conviction arising from the driving of a motor vehicle, other than a parking, vehicle weight, or vehicle defect violation, for:
- (i) excessive speeding, involving a single charge of driving 15 miles per hour or more above the posted speed limit;
  - (ii) reckless driving, as defined by state or local law;
  - (iii) a violation of a state or local law related to motor vehicle traffic control, including a law regulating the operation of vehicles on highways, arising in connection with a fatal accident;
  - (iv) improper or erratic traffic lane change;
  - (v) following the vehicle ahead too closely; or
  - (vi) a violation of Sections 522.011 or 522.042; or
- (B) a violation of Section 522.015.<sup>7</sup>
- CDL holders are also ineligible for dismissal of traffic offenses upon completion of a drivers safety course. Tex. Code of Crim. Proc. Art. 45.0511(s). Similarly, CDL holders are ineligible for suspension

of sentence and deferral of traffic offenses.<sup>8</sup>

### Accidents Involving Commercial Motor Vehicles

Of an estimated 231 million vehicles on U.S. roads in 2003, approximately 8.7 million (3.8%) of those vehicles were large trucks and buses. According to available accident data these large trucks and busses were much more likely to be involved in collisions than other vehicles.

Of 6,328,000 motor vehicle crashes, 6.9% involved large trucks and buses. Of 38,252 fatal vehicle collisions, 4,289 (11.2%) involved large trucks and buses. Therefore, large trucks and buses were almost twice as likely to be involved in a collision. Similarly, large trucks and buses were almost three times more likely to be involved in a fatal accident.

### The Structure of Judicial Disciplinary Actions

Municipal judges are subject to the Code of Judicial Conduct with few exceptions. Under the Texas Constitution, judges may be disciplined for violation of the Code.

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. Any person holding an office specified in this subsection may be suspended from office with or without pay by the Commission immediately on being indicted by a State or Federal grand jury for a felony offense or charged with a misdemeanor involving official misconduct. On the filing of a sworn complaint charging a person holding such office with 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 and persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit on the judiciary or on the administration of justice, the Commission, after giving the person notice and an opportunity to appear and be heard before the Commission, may recommend to the Supreme Court the suspension of such person from office. The Supreme Court, after considering the record of such appearance and the recommendation of the Commission, may suspend the person from office with or without pay, pending final disposition of the charge.<sup>9</sup>

The Legislature has defined “willful or persistent conduct that is clearly inconsistent with the proper performance of a judge’s duties” broadly in statutory language creating the Judicial Conduct Commission:

- (b) For purposes of Section 1-a, Article V, Texas Constitution, “wilful or persistent conduct that is clearly inconsistent with the

proper performance of a judge’s duties” includes:

- (1) wilful, persistent, and unjustifiable failure to timely execute the business of the court, considering the quantity and complexity of the business;
  - (2) wilful violation of a provision of the Texas penal statutes or the Code of Judicial Conduct;
  - (3) persistent or wilful violation of the rules promulgated by the supreme court;
  - (4) incompetence in the performance of the duties of the office;
  - (5) failure to cooperate with the commission; or
  - (6) violation of any provision of a voluntary agreement to resign from judicial office in lieu of disciplinary action by the commission.
- (c) The definitions provided by Subsections (b) and (d) are not exclusive.
  - (d) For purposes of Subdivision (6), Section 1-a, Article V, Texas Constitution, a misdemeanor involving official misconduct includes a misdemeanor involving an act relating to a judicial office or a misdemeanor involving an act involving moral turpitude.<sup>10</sup>

On request of the Judicial Conduct Commission, the Texas Supreme Court may appoint a tribunal to review the commissions recommendations. The tribunal holds its responsibilities to a very high standard:

In a civilized society, members of the judiciary are significant public figures whose authority necessarily reaches all points within their respective jurisdictions, if not beyond. Members of the judiciary

of the State of Texas, whether a municipal judge in Fort Stockton, a justice of the peace in Cameron County, the county court at law judge in Liberty County, a state district judge in Ozona, a justice on the Sixth Court of Appeals, Texarkana, or the Chief Justice of the Texas Supreme Court, all serve as the collective guidon of the banner representing fairness and impartiality in our state. It is for this reason, plus others, that the judiciary must nurture and maintain respect for their decisions, as well as the judiciary of the State of Texas as a whole. The Texas jurist must be held to the highest standards of integrity and ethical conduct, much more so than the standards to which members of the executive and legislative branches are held accountable. Consequently, the ultimate standard for judicial conduct in the State of Texas must be more than effortless obedience to the law, but rather, must be conduct which constantly reaffirms one’s fitness for the high responsibilities of judicial office and which continuously maintains, if not furthers, the belief that an independent judiciary exists to protect the citizen from both government overreaching and individual self-help.<sup>11</sup>

The standard of conduct does not vary based upon whether or not the judge was a lawyer, appointed or elected:

Nothing in this case suggests that respondent, by virtue of her position as an elected non-lawyer justice of the peace, should not be held to the same standard as a law-trained or merit selection judge who committed the same violation. Her conduct did not violate some technical provision

of the Code of Judicial Conduct. Basic instincts of fairness should have alerted respondent that she should not use her position as a member of the judiciary to influence a judicial colleague's handling of her friend's or relative's cases.<sup>12</sup>

Further challenges to the canons as overbroad and vague have been unsuccessful:

Arguments in other jurisdictions that constitutional and statutory provisions for the discipline of judges were vague or overbroad have been consistently rejected on the ground that the Code of Judicial Conduct furnished sufficient specification of the judicial conduct which warrants disciplinary action. (Citation omitted.) Statutes and constitutional provisions which define in similarly broad terms the grounds for removal of judges from office have been upheld in *In re Lowery*, S.W.2d (Tex. Rev. Trib. Feb. 13, 1998, pet. denied); *Napolitano v. Ward*, 317 F. Supp. 79 (N.D.Ill. 1970) ("for cause"); *Keiser v. Bell*, 332 F. Supp. 608 (E.D.Pa. 1971); *Halleck v. Berliner*, 427 F. Supp. 1225 (D.D.C. 1977); *In re Nowell*, 293 N.C. 235, 237 S.E.2d 246 (1977); *Nicholson v. Judicial Retirement and Removal Comm.*, 562 S.W.2d 306 (Ky. 1978); and *In re Gillard*, 271 N.W.2d 785 (Minn. 1978).

In light of these decisions, we find no merit in Respondent's contention that the standards he was found to have violated are unconstitutionally vague. While the Canons challenged in this matter may proscribe some speech and conduct which, for other persons in other circumstances, could not be constitutionally proscribed, Respondent's contention that they

are unconstitutionally overbroad must be and is rejected.<sup>13</sup>

### The Application of the Judicial Canons

There are no reported cases involving the discipline of judges for masking traffic violations of CDL holders. There are, however, reported cases involving judges accused of improperly dismissing tickets and changing charges.

In *Snow's Case*, 674 A.2d 573 (New Hampshire, 1996), the New Hampshire Supreme Court found that the judge had contacted a police officer who issued a speeding ticket to the judge's brother. The judge told the police officer who had issued the ticket that he (the judge) was surprised that the officer had not recognized the judge's brother. The officer asked the judge to have his brother come to the police station so they could take care of the ticket. When the judge's brother came to the station, the officer destroyed all copies of the ticket. Based on these facts the committee on judicial conduct found that the judge had violated Canon 1, Canon 2A, and Canon 2B of the Code of Judicial Conduct.

The New Hampshire Supreme Court rejected the judge's claim that his actions did not rise to the level of serious misconduct:

Judge Snow first directs our attention to several judicial conduct cases from other jurisdictions where the conduct involved was "serious." He cites, for example, *Matter of Wait*, 67 N.Y.2d 15, 490 N.E.2d 502, 499 N.Y.S.2d 635 (N.Y. 1986), in which the judge engaged in "affirmative behavior" that supported the court's finding a "serious" violation. In *Matter of Wait* the implicated judge presided over six cases involving close relatives, on several occasions reducing traffic charges on his own motion. 490

N.E.2d at 502-03. The New York Court of Appeals concluded that this was "serious misconduct" which created the appearance of impropriety in violation of Canon 2. 490 N.E.2d 502 at 503; see *Matter of Reedy*, 64 N.Y.2d 299, 475 N.E.2d 1262, 1263, 486 N.Y.S.2d 722 (N.Y. 1985). Apparently, because the facts underlying the instant case are clearly less "serious," we are to conclude that they are not "serious." We decline to do so. We conclude that Judge Snow's misconduct, constituting violations of several canons, was "serious."

Judge Snow's second basis for claiming that his case should be resolved informally because he did not engage in "serious" misconduct is that he did not intend to "fix" his brother's ticket. There is no intent requirement in these canons. *Cf. Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 859, 100 L. Ed. 2d 855, 108 S. Ct. 2194 (1988) (scienter is not an element of a violation of federal rule governing recusal where impartiality might reasonably be questioned). In fact, it is practically impossible to impose a mens rea element on the "appearance of impropriety" standard in Canon 2. See *Blaisdell v. City of Rochester*, 135 N.H. 589, 593, 609 A.2d 388, 390 (1992). "Whether an appearance of impropriety exists is determined under an objective standard, i.e., would a reasonable person, not the judge himself, question the impartiality of the court." *Id.*; see *United States v. Greenough*, 782 F.2d 1556, 1558 (11th Cir. 1986). Accordingly, "the subjective intent or motivation of the judge is not a significant factor in assessing [the judge's] conduct . . . under this standard." *Adams v. Com'n on Judicial Performance*, 10 Cal. 4th 866, 897



P.2d 544, 548 (Cal. 1995) (analyzing standard of “bringing the judicial office into disrepute”); see *Wehringer’s Case*, 130 N.H. at 721, 547 A.2d at 260. We reject Judge Snow’s argument that we dismiss the recommendation of the committee and order an informal resolution.<sup>14</sup>

Judge Snow was publicly censured, suspended without pay for six months, ordered to complete a judicial ethics course and ordered to reimburse the judicial conduct committee for its expenses.

The New York Court of Appeals considered the ethical consequences of changing the information on a traffic violation from a moving violation to a non-moving violation. *In re Conti*,<sup>15</sup> Judge Ernest Conti was charged with misconduct in the disposition of two tickets. The tickets were dismissed by Judge Conti without first informing the prosecutor as required by law. In removing Judge Conti from the bench the Court noted:

We have previously held that ticket-fixing is such a serious impropriety that even a single isolated incident can serve as a basis for removal (*Matter of Reedy*, 64 NY2d 299), although there is no per se rule requiring removal in every case (see, *Matter of Edwards*, 67 NY2d 153, 155). Here, as the credible evidence shows, petitioner not only “fixed” speeding tickets on two separate occasions, but he also compounded his offense by his dishonesty in altering one of the tickets and then telling a patently false story when called upon to explain his conduct to the Commission.<sup>16</sup>

The New York Court of Appeals considered a somewhat similar circumstance when it decided *In the Matter of Reedy*, 475 N.E.2d 1262 (Court of Appeals of New York, 1985). Judge James Reedy’s son and

son’s friend were ticketed for speeding in the village where Judge Reedy served as town justice. Judge Reedy contacted the judge of an adjoining town and asked him to accept transfer of the cases. The judge of the neighboring village agreed. When the judge of the neighboring village picked up the citations, the offenses charged had been changed from speeding to parking. The Court upheld the Committee’s recommendation to remove Judge Reedy from the bench.

In each of the above cases the judges were disciplined for dismissing or changing charges. While these cases do not directly address masking of traffic violations committed by CDL holders, they do provide insight into how such conduct by a judge might be resolved.

### Conclusion

Concern over road safety has led to increasingly stringent federal regulation of CDL holders. States that do not follow federal regulations risk loss of federal funds. Texas has passed laws and regulations as required by Congress.

Statistically, commercial motor vehicles are three times more likely to be involved in fatal accidents than other vehicles. Commercial vehicle drivers are also twice as likely to be involved in collisions.

Judges do not make the law. Judges follow the law. As judges, we can understand the purpose of a law and be persuaded that it is desirable and thoughtful. But even if not in agreement with the wisdom of a law, judges must follow the law. To do otherwise would violate our oath as judges, lead to chaos and bring the judiciary into disrespect.

The public deserves judges who follow the law and observe the high

ethical standards of the judiciary.

<sup>1</sup> Section 3(1), Motor Carrier Safety Act (MCSA) of 1999.

<sup>2</sup> 49 USC §31311(a)(19).

<sup>3</sup> 145 Cong. Rec. H12870-12874 (daily ed. Nov. 18, 1999); 145 Cong. Rec. S15207-152111 (daily ed. Nov. 19, 1999).

<sup>4</sup> 49 CFR §384.226.

<sup>5</sup> Section 522.041, T.C.

<sup>6</sup> Section 522.042, T.C.

<sup>7</sup> Section 522.003(25), T.C.

<sup>8</sup> Article 45.051(f), C.C.P.

<sup>9</sup> Texas Constitution Article V §1-a(6).

<sup>10</sup> Section 33.001(b), G.C.

<sup>11</sup> *In re Barr*, 13 S.W.3d 525, 532 (Tex. Rev. Trib. 1998).

<sup>12</sup> *In re Lorona*, 875 P.2d 795, 802 (Arizona, 1994).

<sup>13</sup> *In re Barr*, 13 S.W.3d 525, 565 (Tex. Rev. Trib. 1999).

<sup>14</sup> *Snow’s Case*, 674 A.2d 573, 577 (New Hampshire, 1996).

<sup>15</sup> 516 N.E.2d 1207 (Court of Appeals of New York, 1987),

<sup>16</sup> *Conti* at 418.

## LCI Rule Revision

On August 3, 2006, the Texas Commission of Licensing and Regulation adopted a rule revision that postpones for four months the requirement that licensed court interpreters earn continuing education hours to renew their licenses.

Before the Commission voted to revise the rule, licensed court interpreters whose licenses expired after September 1, 2006, were required to obtain eight hours of continuing education credit to renew

their licenses. The Commission's action, however, delays the effective date of the continuing education requirement until January 1, 2007.

This means that licensed court interpreters whose licenses expire between September 1, 2006, and December 31, 2006, do not need to take any continuing education classes to renew their licenses. All licensed court interpreters whose licenses expire after on or after January 1, 2007, will be required to prove they have earned eight hours of continuing education before their licenses will be renewed.

The Commission elected to delay the effective date of the rule because of the scarcity of continuing education courses available to licensed court interpreters. TDLR currently has approved only two continuing education courses, and one of the approved courses was a one-time only offering. Seven continuing education providers have been approved, but only one on-going course has been approved.

To find a list of approved continuing education courses or check the number of hours of continuing education you have completed, go to [www.license.state.tx.us/court/lcice.htm](http://www.license.state.tx.us/court/lcice.htm).

# Ethics Opinions 291 and 292

## Ethics Opinion Number 291 (2005)

### *Legal Representation of Judge or Court Staff by County Attorney*

**QUESTION:** Would it be a violation of the Code of Judicial Conduct for a judge or the judge's staff to be represented by the County Attorney in court proceedings wherein the judge and/or the court staff have been sued in their official capacity, even though the judge presides over cases in which the County Attorney, or an Assistant County Attorney, represents the State in mental health and indigent guardianship matters, and the County in various areas of civil litigation involving its various departments, agencies, and programs?

**ANSWER:** No.

The Committee expresses no opinion concerning the legality of any given type of legal representation. Legal representation by the County Attorney is established by the Constitution and laws of the State of Texas. Assuming that a given type of representation is authorized by law, and further that there are no other facts present which would otherwise require recusal or disqualification under Canon 3(B)(1), the Committee is of the opinion that the judge can be represented by the

County Attorney and continue to preside over other matters in which the County Attorney is appearing as legal counsel.

## Ethics Opinion Number 292 (July 2006)

### *Solicitation of Wedding Business*

**QUESTION:** May a judge directly contact couples as they leave a county clerk's office with their marriage license for the purpose of soliciting a marriage ceremony for pay?

**ANSWER:** No.

Canon 2A states in part "A judge ... should act at all times in a manner that promotes public confidence in the integrity ...of the Judiciary." It is the belief of the Committee that a judge's active solicitation of wedding business in this manner does not promote public confidence in the judiciary.

The judge should also be mindful of the restrictions of Canons 2B and 4D. Canon 2B prohibits using the "prestige of judicial office to advance the private interests of the judge or others." Canon 4D requires judges to "refrain from financial and business dealings that tend to ...exploit his or her judicial position." Solicitation of wedding business in this manner is a use of the prestige of judicial office to advance the judge's private interests and constitutes financial and business dealings that exploit the judge's judicial position.

Canon 4I (1) provides, "A judge may receive compensation...for the extra-judicial activities permitted by this Code, if the source of such payment does not...give the appearance of impropriety." The committee believes that the acts described above give the appearance of impropriety.

### 2006 Ethics Committee Members

Hon. Stephen B. Ables, Chair  
Hon. Caroline Baker  
Hon. Cathy Chochran  
Hon Lora J. Livingston  
Hon. Menton Murray  
Hon. Kathleen Olivares  
Hon. Brian Quinn  
Hon. Penny Roberts  
Hon. Mark Rusch  
Hon. Melissa Goodwin  
Hon. Robin A. Ramsay

### Ethics Opinions Q&A

To ask an ethics question, contact Judge Stephen B. Ables (830/792-2290) or the State Commission on Judicial Conduct (877/228-5750).





### Municipal Court Week

During the week of November 6-10, 2006, municipal courts across Texas are encouraged to host events recognizing the work of local courts and personnel by celebrating Municipal Court Week.

Possible activities include:

- Inviting the city council and public to tour your court, and asking the presiding judge to make a short presentation.
- Showing the TMCEC video *Role of the Municipal Court* to schools and civic groups. (Call TMCEC if you do not have a copy: 800/252-3718.)
- Inviting a local high school government class to host a mock trial at your court.

Log on to the TMCEC website ([www.tmcec.com](http://www.tmcec.com)) for more ideas!

Each year more courts and cities join in this annual recognition of the important role municipal courts play in their communities. A variety of events are sponsored, including local proclamations, balloons and candy, receptions, exhibits, student field trips, mock trials, Q & A sessions, theatrical productions, appreciation dinners, court tours, open houses, amnesty programs, video showings, and newsletter/newspaper articles. "We hope for even greater participation in 2006," said TMCEC/TMCA President Steven Williamson (Fort Worth). "This is an excellent opportunity for the court to educate the public and city council about municipal court."

Courts are asked to send TMCEC copies of any local press releases, newspaper articles, planning documents, photographs, *etc.* celebrating the important contributions of Texas municipal courts in their communities. These materials will be displayed on the TMCEC website as examples to encourage participation by other courts. Please send your materials to TMCEC, 1609 Shoal Creek Blvd., Suite 302, Austin, Texas 78701 or email them to [tmcec@tmcec.com](mailto:tmcec@tmcec.com).

TMCEC expresses its appreciation to Texas Representatives Burt Solomons and Kenny Marchant, who sponsored the House Resolution in the 78th Legislature establishing Municipal Court Week.

### Bailiff/Warrant Officer Seminars

A specially designed program for bailiffs and warrant officers will be offered by TMCEC in Kerrville on October 30 – November 1, 2006 at the Inn of the Hills. The program will also be held in Corpus Christi in June. Registration is \$50, and TCLEOSE credit will be offered at no additional charge. Housing, course materials, two breakfasts, and a lunch will be provided. Please register by October 1, 2006.

Monies from your court's Security Fund may be used to cover the registration fee, as court security is on the agenda.

A registration form can be found in the TMCEC Academic Schedule and on page 16 of this newsletter, and a flyer will be mailed to all courts in mid September. If you have questions about the program, please contact Lois Wright at TMCEC (800/252-3718).

### MCLE Fees

As announced in the December 2005 *Municipal Court Recorder*, the TMCA/TMCEC Board of Directors adopted a policy to charge a mandatory \$50 registration fee to all program participants (including attorney and non-attorney judges, clerks, court administrators, bailiffs, and warrant officers) for programs not offered at the TMCEC office in Austin. This fee is effective September 1, 2006.

In addition, the Board adopted an optional \$100 fee that will only apply to attorney judges who wish to receive MCLE credit for their attendance at TMCEC programs. This optional fee is also effective September 1, 2006.

#### **I am an Attorney Judge. Must I pay the fee?**

There are notable exemptions from the \$100 fee. For example, if attorney judges take the judicial exemption or do not need or want the MCLE credit, they will not pay the \$100 fee. Should judges choose to take the judicial exemption, they will still receive judicial education credit. Further, any member of the State Bar of Texas who is 70 years of age or older is exempt from MCLE requirements. If they are not reporting MCLE hours to the State Bar of Texas, they would not be required to pay the \$100 fee to TMCEC as the hours would not be reported.

*continued*

## Why Pay the Fees?

The Board chose to adopt these fees to offset the rising costs of fuel, which in turn increase TMCEC training expenses including travel costs for faculty and staff, freight costs, and course material costs. Additionally, the 79<sup>th</sup> Texas Legislature approved increasing travel allowances from \$80 to \$85 a night for lodging, from \$30 to \$36 a night for meals, and from 35 cents to 44.5 cents for mileage. No additional grant funds were allocated for judicial education. Given these economic realities, the Board adopted these fees rather than cut TMCEC programs or staff.

## How Do I Pay the Fees?

The fees will be payable to Texas Municipal Courts Education Center by check or credit card with the registration forms.

Letters of concern regarding the new fees may be sent to the Honorable Judge Robin A. Ramsay, President of the TMCEC Board of Directors, at the following address:

Presiding Judge  
City of Denton  
601 E. Hickory, Suite D  
Denton, TX 76205

FAX: 940/349-9924

### EMAIL:

raramsay@cityofdenton.com

We look forward to working with you over the upcoming year as we strive to make each program we offer even more informative and helpful to you.

# TMCEC FY06 PROGRAM AUDIOTAPES

The following are audiotape recordings from TMCEC's *El Paso Regional 12-Hour Judges and Clerks Programs*. Duplicates are available through the Center at no charge; one set per court.



Check here  
for specific  
tapes

Format:  
(check one)

cassette  
 compact disk



### JUDGES PROGRAM:

- \_\_\_ *Points: Driver's Responsibility* — Sherrie Zgabay, Driver Improvement Manager, DPS
- \_\_\_ *CDL, DSC & Deferred Disposition Update* — Gary Ellsworth, Judge, Spearman & Robin A. Ramsay, Presiding Judge, Denton
- \_\_\_ *The Ethical Price of Masking* — Robin A. Ramsay, Presiding Judge, Denton
- \_\_\_ *Federal & State Case Law Update* — Ryan K. Turner, General Counsel, TMCEC
- \_\_\_ *Pretrial Hearings* — Rick Cate, Municipal Judge, Helotes
- \_\_\_ *Ignition Interlock Devices* — Robin A. Ramsay, Presiding Judge, Denton
- \_\_\_ *Handling Government Documents* — Ted Wood, Special Counsel for Trial Courts, Office of Court Administration, Austin
- \_\_\_ *Orders* — Tony Kosta, Municipal Judge, Harker Heights
- \_\_\_ *Youthful Drivers* — Gary Ellsworth, Judge, Spearman
- \_\_\_ *Proper Reporting to the Office of Court Administration (OCA)* — Angela Garcia, Judicial Information Manager, OCA
- \_\_\_ *Corporate Defendants* — Ryan K. Turner, General Counsel, TMCEC
- \_\_\_ *Procedural & Substantive Legislative Update* — Ed Spillane, Presiding Judge, College Station
- \_\_\_ *FTA/Warrants* — Margaret Robbins, Program Director, TMCEC
- \_\_\_ *Basic Vocabulary & Concepts* — Robert C. Richter, Jr., Judge, Missouri City
- \_\_\_ *Juvenile Issues Update* — Ryan K. Turner, General Counsel, TMCEC
- \_\_\_ *Dismissals* — Brian Holman, Presiding Judge, Lewisville
- \_\_\_ *Ordinances* — Stephen Crane, Judge, Garland & Sachse
- \_\_\_ *Transportation Code Update* — C. Victor Lander, Judge, Dallas
- \_\_\_ *Appeals* — Brian Holman, Presiding Judge, Lewisville

### CLERKS PROGRAM:

- \_\_\_ *Professionalism & Court Decorum* — Jan Matthews, Municipal Judge, Lubbock
- \_\_\_ *DSC/Deferred* — Margaret Robbins, Program Director, TMCEC
- \_\_\_ *Juveniles* — Margaret Robbins, Program Director, TMCEC
- \_\_\_ *CDLs & Commercial Motor Vehicles* — Robin D. Smith, Presiding Judge, Midland
- \_\_\_ *Who is In Charge of What and When* — Robin A. Ramsay, Presiding Judge, Denton
- \_\_\_ *Court Costs & Avoiding Fraud* — Rene Henry, Financial Management Specialist, Austin
- \_\_\_ *Collection Roles* — Jim Lehman, Collections Specialist, OCA
- \_\_\_ *Court Security* — Ed David, Marshal, Baytown

Return order to 1609 Shoal Creek Blvd. #302, Austin, TX 78701 or fax to 512/435-6118.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Court: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Note: Expect 2-3 weeks for delivery.

# A Basic 32-Hour Court Support Personnel Seminar: September 25-29, 2006

Only new court clerks or court clerks who have never attended a TMCEC seminar are eligible to attend this program.

Many cities are unaware that municipal court clerks are court officers and must observe the same standards of fidelity and diligence that the Code of Judicial Conduct requires of a judge. Since the clerk's actions can and do bear directly on proper court operations, court clerks should understand the differences between judicial and ministerial duties. If a clerk oversteps the bounds of his or her authority, the clerk, judge, and city may be subject to liability. This program will help clerks perform their jobs properly and more effectively and accurately.

## REGISTRATION INFORMATION

**SEMINAR:** The cost to attend is \$50. The seminar will be conducted at the Doubletree Austin located at 6505 IH-35 North. It begins Monday, **September 25** and concludes Friday, **September 29**. Registration begins on Monday at 10:00 a.m. Class begins at 1:00 p.m. on Monday and concludes on Friday at 12:00 p.m.

**HOTEL REGISTRATION:** The Center makes all hotel reservations from the information that you provide on your seminar registration form. The Center pays the entire cost of the room for the nights of 9/25, 9/26, 9/27, and 9/28. You are responsible for your incidentals (telephone calls, rooms service, movies, etc.) You must live at least 30 miles from the seminar site to request a room.

**MEALS:** While you are attending the seminar, the Center provides some of your meals. On Tuesday, Wednesday, and Thursday, breakfast and lunch are provided. On Friday, only breakfast is provided. Guests are **not allowed** to join seminar participants at TMCEC-sponsored meals or sessions.

**CANCELLATION POLICY:** You must cancel at least five working days before the seminar starts. If you don't, you will be billed for the first night's lodging costs, meal expense, and course material (\$270). Cancel by calling the Center.

.....  
**TEXAS MUNICIPAL COURTS EDUCATION CENTER FY07 REGISTRATION FORM**

## 32-hour New Clerks Conference

at the Doubletree Hotel Austin, September 25-29, 2006



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

(Please print legibly): Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_

Names also Known By: \_\_\_\_\_ 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 32-hour seminars). To share with another seminar participant, you must indicate that person's name on this form.

\_\_\_ I need a private, single-occupancy room.

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

\_\_\_ I need a private double-occupancy room, but I'll be sharing with a guest. [I will pay additional cost, if any, per night.]

I will require: \_\_\_1 king bed \_\_\_2 double beds

\_\_\_ I do not need a room at the seminar.

How will you be traveling to the seminar? \_\_\_Driving \_\_\_Flying

Arrival date (Class begins at 1:00 p.m. on 9/25/06): \_\_\_\_\_ \_\_\_Smoker \_\_\_Non-Smoker

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 \_\_\_Court Administrator \_\_\_Court Clerk \_\_\_Deputy Clerk Other: \_\_\_\_\_

I certify that I am currently serving as a municipal court clerk in the State of Texas. I agree that I will be responsible for any costs incurred if I do not cancel five (5) working days prior to the seminar. I will cancel by calling the Center. If I must cancel on the day before the seminar due to an emergency, I will call the TMCEC registration desk at the seminar site. If I am a "no show," TMCEC reserves the right to invoice me or my city for meal expenses, course materials and possibly housing (\$85 plus tax per night). If I have requested a room, I certify that I live at least 30 miles or 30 minutes driving time from the seminar site. **A \$50 registration fee is required. Only checks and credit card payments are accepted. Payment due with registration form.**

Participant Signature

Date

Return to TMCEC, 1609 Shoal Creek Blvd.#302, Austin, TX 78701. Fax registration forms with credit card information to 512/435-6118.

# Low Volume Courts Series for Judges & Clerks

Since 1999, TMCEC has offered a series of continuing judicial education programs for non-attorney judges and their clerks. Known as the *Low Volume Court Seminar*, this series offers an opportunity for judges and clerks to collectively examine issues and problems commonly experienced in smaller courts. In FY07, these conferences will focus on the application of state and federal constitutional law to procedures in municipal court. The seminar will include instruction about magistrate, juvenile and traffic issues.

Enrollment is limited to 40 eligible participants so that there can be more involvement by attendees. Come prepared to participate. The Low Volume Court Seminar begins at 8:00 a.m. on Day 1 and ends at 12:00 noon on Day 2. The registration fee is \$50.

## McALLEN

November 6-7, 2006  
Renaissance Casa de Palmas  
101 N. Main Street

## ABILENE

March 8-9, 2007  
MGM Elegante Suites  
4250 Ridgemont Drive

## TYLER

April 24-25, 2007  
Holiday Inn Tyler  
5701 Broadway

## NOTES:

- These seminars are for non-attorney judges and clerks who have previously completed the first year's training. They do not offer MCLE credit to attorney judges.
- Judges and clerks who attended this program in FY06 **cannot** attend in FY07.
- Enrollment is limited to 40 participants for each seminar, providing ample opportunity for questions and answers.
- On-site seminar registration begins at 7:00 a.m. on Day 1; there are no pre-conferences scheduled.

# Orientation for New Judges and Clerks

Not for mandatory judicial education credit.

Meet with TMCEC staff members to discuss key concepts and processes for municipal courts in Texas. Not only will you leave understanding how municipal courts are structured in this state, but you will also carefully examine procedures related to Driving Safety Courses (DSC) and Deferred Disposition.

10:00 a.m. - 3:30 p.m.

(Lunch provided at no charge.)

Check the Orientation date that you would like to attend:

Wednesday, October 18, 2006

Wednesday, February 14, 2007

Wednesday, April 18, 2007

There is no registration fee for this program.

## ORIENTATION REGISTRATION FORM

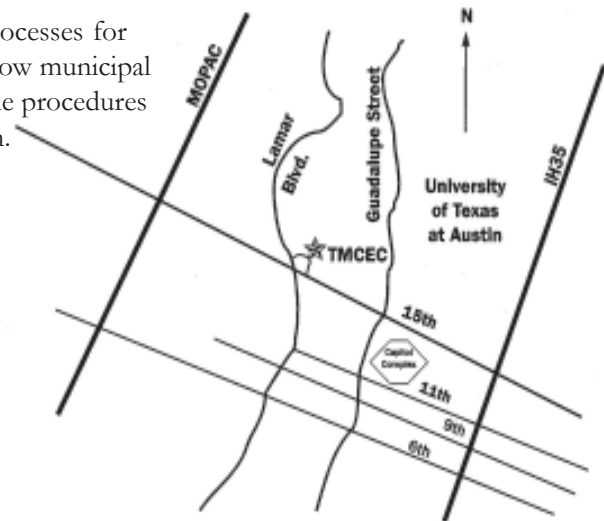
Name: \_\_\_\_\_ Title: \_\_\_\_\_

Court Represented: \_\_\_\_\_ Hire Date: \_\_\_\_\_

Court Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ E-mail: \_\_\_\_\_

Call to enroll: 800/252-3718 or 512/320-8274 or fax registration form: 512/435-6118





# 2006-2007 TMCEC Academic Schedule At-A-Glance



Conference	Date(s)	City	Hotel Information
TMCA Annual Meeting	September 14-16, 2006	Galveston	San Luis Resort & Spa, 5222 Seawall Blvd.
32-Hour New Clerks	September 25-29, 2006	Austin	Doubletree Austin, 6505 IH-35 North
12-Hour Regional Clerks	October 10-11, 2006	Nacogdoches	Fredonia Hotel, 200 North Fredonia
12-Hour Regional Judges	October 12-13, 2006	Nacogdoches	Fredonia Hotel, 200 North Fredonia
12-Hour Bailiffs/Warrant Officers	Oct. 31 - Nov. 1, 2006	Kerrville	Inn of the Hills, 1001 Junction Highway
12-Hour Low Volume Seminar	November 6-7, 2006	McAllen	Renaissance Casa de Palmas, 101 N. Main Street
12-Hour Regional Judges and Clerks	November 16-17, 2006	Austin	Omni Hotel Southpark, 4140 Governor's Row
32-Hour New Judges and Clerks	December 4-8, 2006	Austin	Omni Hotel Southpark, 4140 Governor's Row
12-Hour Prosecutors	January 16-17, 2007	Austin	Omni Hotel Southpark, 4140 Governor's Row
Court Administrator Special Topic: ICM: Human Resource Management	January 16-18, 2007	Austin	Omni Hotel Southpark, 4140 Governor's Row
12-Hour Regional Judges and Clerks	January 30-31, 2007	San Antonio	Omni San Antonio Hotel, 9821 Colonnade Blvd.
Courts & Local Government Technology	Jan. 30 - Feb. 1, 2007	Austin	Austin Convention Center
Level III Assessment Clinic	February 9-11, 2007	New Braunfels	John Newcombe Tennis Ranch, 325 Mission Valley
12-Hour Regional Judges and Clerks	February 26-27, 2007	Houston	Omni Houston Hotel, Four Riverway
12-Hour Low Volume Seminar	March 8-9, 2007	Abilene	MGM Elegante Suites, 4250 Ridgmont Drive
12-Hour Regional Judges and Clerks	March 22-23, 2007	Richardson	Richardson Hotel, 701 East Campbell Road
12-Hour Regional Judges and Clerks	April 12-13, 2007	Amarillo	Ambassador Hotel, 3100 I-40 West
12-Hour Low Volume Seminar	April 24-25, 2007	Tyler	Holiday Inn Tyler, 5701 South Broadway
12-Hour Regional Clerks	May 1-2, 2007	S. Padre Island	Radisson South Padre Island, 500 Padre Blvd.
12-Hour Regional Judges (Attorneys)	May 7-8, 2007	S. Padre Island	Radisson South Padre Island, 500 Padre Blvd.
12-Hour Regional Judges (Non-Attorneys)	May 9-10, 2007	S. Padre Island	Radisson South Padre Island, 500 Padre Blvd.
12-Hour Prosecutors	May 23-24, 2007	Houston	Omni Houston Hotel at Westside, 13210 Katy Freeway
12-Hour Bailiffs/Warrant Officers	June 11-12, 2007	Corpus Christi	Omni Corpus Christi Hotel Marina Tower, 707 North Shoreline
12-Hour Court Administrators	June 13-14, 2007	Corpus Christi	Omni Corpus Christi Hotel Marina Tower, 707 North Shoreline
12-Hour Regional Judges and Clerks	June 27-28, 2007	Odessa	MCM Elegante, 5200 E. University
32-Hour New Judges and Clerks	July 16-20, 2007	Austin	Omni Hotel Southpark, 4140 Governor's Row
2007 Legislative Updates:	August 7, 2007	Lubbock	Holiday Inn Hotel & Towers, 801 Avenue Q
	August 14, 2007	Houston	Omni Westside, 13210 Katy Freeway
	August 17, 2007	Austin	Omni Southpark, 4140 Governor's Row

# TEXAS MUNICIPAL COURTS EDUCATION CENTER FY07 REGISTRATION FORM

**Conference Date:** \_\_\_\_\_ **Conference Site:** \_\_\_\_\_

- Check one:**  Non-attorney Judge (\$50 fee)       Clerk (\$50 fee)       Prosecutor (\$250 fee)  
 Attorney Judge **not seeking CLE credit** (\$50 fee)       Court Administrator (\$50 fee)       Prosecutor **not requiring a room** (\$100 fee)  
 Attorney Judge **seeking CLE credit** (\$150 fee)       Assessment Clinic (\$100 fee)       Bailiff/Warrant Officer\* (\$50 fee)

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

(Please print legibly): Last Name: \_\_\_\_\_ First Name : \_\_\_\_\_ MI: \_\_\_\_\_

Names also known by: \_\_\_\_\_ 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 32-hour seminars, three nights at the 24-hour seminars/assessment clinics and two nights at the 12-hour seminars. To share with another seminar participant, you must indicate that person's name on this form.

- I need a private, single-occupancy room.  
 I need a room shared with a seminar participant. [Please indicate roommate by entering seminar participant's name: \_\_\_\_\_ (Room will have 2 double beds.)]  
 I need a private double-occupancy room, but I'll be sharing with a guest. [I will pay additional cost, if any, per night]

I will require:     1 king bed     2 double beds

I do not need a room at the seminar.

How will you be traveling to seminar?     Driving     Flying

Arrival date: \_\_\_\_\_       Smoker     Non-Smoker

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

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

Judge's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Municipal Court of: \_\_\_\_\_

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 five (5) working days prior to the conference. I will cancel by calling the Center. If I must cancel on the day before the seminar due to an emergency, I will call the TMCEC registration desk at the conference site. 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 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 live at least 30 miles or 30 minutes driving time from the conference site. Participants in the Assessment Clinics must cancel in writing two weeks prior to the seminar to receive refund. Payment is due with registration form. **Registration shall be confirmed upon receipt of registration form and payment.**

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

## PAYMENT INFORMATION

- Check Enclosed (Make checks payable to TMCEC.)  
 Credit Card (Complete the following; \$2.00 will be added for each registration made with credit card payment.)

Credit Card Registration: (Please indicate clearly if combining registration forms with a single payment.)

Credit card type:	<b>Credit Card Number</b>	<b>Expiration Date</b>	<b>Verification Number</b> <small>(found on back of card)</small>
<input type="checkbox"/> MasterCard	Name as it appears on card (print clearly): _____	_____	_____
<input type="checkbox"/> Visa	Authorized Signature: _____		

Please return completed form with payment to TMCEC at 1609 Shoal Creek Boulevard, Suite 302, Austin, TX 78701.

Fax registration forms with credit card information to 512/435-6118.





## CLERK'S CORNER

By Margaret Robbins, Program Director, TMCEC

### Use of Credit Cards

Today many courts take credit cards for payment of fines and court costs. Some courts do not realize that Chapter 132 of the Local Government Code requires their city council to approve the use of credit cards or electronic payments before the courts can use those methods of payments.

Section 132.001 defines "credit card" to mean "a card, plate or similar device used to make purchases on credit or to borrow money." That statute defines "payment by electronic means" to mean a "payment by telephone or computer but does not include payment in person or by mail."

Section 132.002 provides that the governing body of the city may authorize the acceptance of payments of fines, court costs or other charges by credit card without requiring a collection fee. Section 132.003, however, allows the city to set a processing fee not to exceed five percent of the amount of the fee, fine, court costs, or other charge being paid. In other words, the court could collect the five percent at the time the charge is made to the credit card.

Section 132.004 states that when a credit card is not honored, the city may collect a service charge in addition to the five percent that was collected at the time the charge was made. The amount of the service charge is the same amount as the fee

charged for a check drawn on an account with insufficient funds.

Section 132.005 gives cities the authority to contract with companies that issue credit cards to collect and seize cards that are outdated or otherwise unauthorized. This statute also allows the city to charge the company a fee for the return of the credit cards.

Section 132.006(b) provides that all fees or charges collected under Chapter 132 must be deposited in the general fund of the city.

Courts should consult with their city attorney and accounting departments about how set up these contracts.

### Handling Hot Checks

This article will not by any means address all the issues involved with handling hot checks, but I hope that it will pique the courts' interests enough to investigate the issue more. While municipal court has the jurisdiction to handle insufficient funds checks from merchants, I will leave that issue for another article. At this time, I will address handling insufficient checks for payment of a fine and costs only.

When a defendant's check for payment of fine and costs "bounces," what should the court do? First, the court should realize that the fine and costs are not paid. The court can send a notice to the defendant and give them an opportunity to bring in cash to take care of their judgment. If the prosecutor is contemplating filing on the defendant for the offense of

issuance of bad check, the notice should be sent certified mail with return receipt requested. (Issuance of bad check is a Class C misdemeanor that can be filed in municipal court. See Section 32.41, Penal Code.) If the court does not hear from the defendant, notify the prosecutor. The next step is to prepare a *capias pro fine*. (One thing the court cannot do is collect the insufficient check fee.)

Most likely, 31 days have passed since the judgment. Hence, the time payment fee is now due. If the court has a contract with an outside vendor or the Texas Department of Public Safety, the court will notify them of the failure to pay. If the prosecutor files the charge of issuance of bad check, with a probable cause affidavit, the court will issue a warrant of arrest for this charge.

One important thing to remember is whether or not the court has reported the court costs to the State Comptroller because the court does not want to double report court costs. If the court reported the court costs on the first payment from the check that "bounced," make sure that they are not reported a second time. The cash payment from the defendant making the check good would just be reimbursing the city for the payment of the court costs already sent to the State.

All of this just because the defendant failed to pay the fine and costs when the defendant's check "bounced." It never ends?



## Untangling the Court Technology Web

By Elisabeth Gazda, TMCEC Program Coordinator

Courts, including municipal courts, are progressively becoming more technologically advanced. Unless one enjoys typing “court technology” into Google and then hoping for the best, it helps to know where to look for technological resources. The following is an overview of sources of technology that are designed to assist municipal courts in their functioning and efficiency. Visiting the websites provided or directly contacting the agencies via email or phone will provide further information.

### **Office of Court Administration (OCA)**

The OCA Judicial Committee on Information Technology is dedicated to integrating technology in trial and appellate courts. The Committee therefore offers guidelines for use of technology in courts, has special contracts with Lexis and Westlaw that allow courts to get discounted access to these very useful databases, and provides information on how courts may acquire surplus and deeply discounted computer software. The OCA website also provides information on grants that will assist courts in implementing technological changes.

### **Department of Information Resources (DIR)**

The DIR was established to manage and monitor the use of information technology in state agencies. This is the place to come for education and training. DIR has contracted with various agencies to provide training. Also, state agencies and courts can purchase through the DIR website from vendors (such as Dell and HP) with whom DIR has negotiated special rates. DIR makes training and purchasing equipment easier by contracting with vendors so that courts will not have to. Navigation of the DIR website is easy and very worthwhile to explore.

### **National Association for Court Management (NACM)**

This national website contains an “IT Corner,” which has various links to vendors, IT forums and other technology-related websites. The list of vendors providing services to Texas courts is smaller than the DIR list, and NACM membership is required to partake in special contract prices. The link to the National Center for State Courts’ Technology website ([www.ncsconline.org/D\\_Tech](http://www.ncsconline.org/D_Tech)) is particularly

interesting. There is, for example, an article discussing the use of an ATM to pay jurors for jury service.

### **Website Hosting?**

While the Texas Association of Counties (TAC) offers free webhosting for member counties, this option is available to individual municipalities for \$10 a month if they join CIRA. For more information, contact Gayle Latham at TAC (512/478-8753). A city website can be extremely useful and is recommended, but cities must individually find the means to create websites. To view examples of city websites, see [www.tmcec.com/courts.html](http://www.tmcec.com/courts.html).

## Contact Info

### **OCA, [www.courts.state.tx.us/oca/jcit](http://www.courts.state.tx.us/oca/jcit)**

Inquiries specific to information technology may be directed to 512/463-1603, or [jcitinfo@courts.state.tx.us](mailto:jcitinfo@courts.state.tx.us)

### **DIR, [www.dir.state.tx.us](http://www.dir.state.tx.us)**

General inquires: 512/475-4700 or [dirinfo@dir.state.tx.us](mailto:dirinfo@dir.state.tx.us)

### **NACM (IT Corner), [www.nacmnet.org/itcornerwelcome.html](http://www.nacmnet.org/itcornerwelcome.html)**

General inquiries: 800/616-6165 or [nacm@ncsc.dni.us](mailto:nacm@ncsc.dni.us)

### **TAC, [www.cira.state.tx.us](http://www.cira.state.tx.us)**

Webhosting: 512/478-8753 or [webdev@cira.state.tx.us](mailto:webdev@cira.state.tx.us)



# TRAFFIC SAFETY

## About the 80 mph Speed Limit

- HB 2257, passed in 2005, called for an increase in speed limits on portions of rural interstate highways in Texas.
- The 80 mph speed limits apply to cars and small trucks, and only during daylight hours.
- The maximum nighttime speed remains 65 mph for all vehicles.
- Speed limits for 18-wheelers/large trucks remain 70 mph during the day; 65 mh at night.
- Affected counties: Crockett, Culberson, Hudspeth, Jeff Davis, Kerr, Kimble, Pecos, Reeves, Sutton, and Ward.
- Location: 432 miles on I-10 and 89 miles on I-20.

(Source: *Transportation News*, May 2006, page 8.)

## Maximum Texas Speed Limits Over the Years

<i>Year Passed</i>	<i>Speed in MPH</i>
1907	18
1919	25
1923	35
1928	45
1942	35
1945	35
1963	70
1974	55
1987	65 (rural interstates only)
1995	70
2001	75 (counties with less than 15 persons per square mile population density)
2006	80 (in 10 rural interstate counties only)

## Record High!

A statewide survey conducted by the Texas Transportation Institute reports that Texas has achieved a record high safety belt use rate in 2006 for Texas: 90.44 percent! This is the first year for Texas to reach the 90 percent level. From Terry Pence, Section Head of Traffic Safety at TxDOT: "A special thanks goes out to you and the communities and organizations you work with that were involved in the Click It or Ticket campaign efforts this year. You helped make a difference! This will result in saving many lives and injuries in Texas."

## 2006 Safety Belt Use in Texas

	<i>All Passenger Vehicles</i>	<i>Passenger Cars</i>	<i>Pickups</i>
<i>Front Seat Estimated Safety Belt Use</i>	<b>90.44%</b>	<b>91.39%</b>	<b>86.43%</b>
<i>Driver Estimated Safety Belt Use</i>	<b>91.75%</b>	<b>92.75%</b>	<b>86.84%</b>
<i>Passenger Estimated Safety Belt Use</i>	<b>84.38%</b>	<b>85.49%</b>	<b>73.90%</b>

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# Meet the New TMCEC Staff

## MEICHIHKO PROCTOR

Meichihko Proctor joined the TMCEC staff on August 1, 2006 as the Program Attorney and Deputy Counsel. Meichihko is originally from San Angelo, Texas, where she received a bachelor's degree in government and psychology from Angelo State University. Upon graduation, Meichihko enjoyed a career in speechwriting for the City of Lubbock while pursuing a master's degree in sociology with a minor in public administration at Texas Tech University. She went on to graduate from the St. Mary's Law School in San Antonio in 2002. Prior to joining

TMCEC, she worked as an associate at Bickerstaff, Heath, Pollan & Caroom practicing municipal law. From 2003-2004, Meichihko was an assistant city attorney for the City of Plano, prosecuting cases in municipal court. She was also the Chief Prosecutor for Domestic Violence in Tom Green County. Her expertise and energy assure a fantastic Judges' Program for FY07.

## LOIS WRIGHT

Lois Wright joined TMCEC in April 2006 as Program Attorney. Her hometown is Sabinal, Texas, a small town due west of San Antonio. Lois

attended the University of Texas at Austin, where she obtained first a bachelor's degree in anthropology, and then her *Juris Doctorate*. In law school, Lois was active in the Texas Journal of Women and the Law, the Capital Punishment Clinic, and the Mediation Clinic. She clerked at the District Attorney's Office in Travis County throughout law school. Lois will bring a fresh perspective to the Bailiff and Warrant Officer Program, and she looks forward to assisting with the New Judges' Program as well.

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## 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**