

# The Recorder

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## COURT COMMUNICATION IS NOT JUST KEY; IT IS CONSTITUTIONAL

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Imagine driving 85 miles per hour on an open highway. Now imagine doing it with your eyes closed. There are psychological reasons why people strive to know what is going to happen. Studies show that one of the most powerful influences on fear is uncertainty.<sup>1</sup> For example, human beings always have and always will try to predict the future to give themselves a feeling of control over their fate.<sup>2</sup> The less people know, the more threatened they feel.<sup>3</sup> This plays itself out in how some defendants handle following through on contacting the court after receiving a citation. Some defendants fail to appear in court. Some of them do so repeatedly. Enforcement of judgments is essential to the integrity of the courts in gaining compliance with court orders and ensuring that those orders are not violated. However, in many cases, the disconnect between a court's order and compliance is a lack of communication. This article will take a look at the concept of notice as a key to fairly and effectively resolving cases.

## PROVIDING FOR THE FAIR ADMINISTRATION OF JUSTICE THROUGH EDUCATION

Robby Chapman  
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*"A cultivated mind is the guardian genius of democracy"* – Mirabeau B. Lamar, President of the Republic of Texas, 1838.<sup>1</sup>

In March 2016, the Department of Justice sent a memo to the states outlining seven areas that, in the Department's view after events in Ferguson, Missouri, every criminal court needed to review. It was an important reminder to Texas cities and municipal courts that understanding of the law is essential to the fair administration of justice. The recommendations were not new or ground breaking;

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**AROUND THE STATE**

**TRAFFIC SAFETY AWARDS**

The Texas Municipal Courts Education Center's (TMCEC) Municipal Traffic Safety Initiatives (MTSI) grant, funded by the Texas Department of Transportation, recently sponsored a traffic safety awards competition to recognize those municipal courts that have demonstrated outstanding contributions to traffic safety and preventing impaired driving in their respective communities. All municipal courts in the State of Texas were eligible to apply.



Applicants were judged on their activities relating to increasing traffic safety while preventing impaired driving traffic crashes, traffic fatalities, juvenile DUI, child safety seat offenses, red light running, and other traffic related offenses. Eighteen courts were selected to receive awards: 10 low volume (serving less than 30,000 people), five medium volume (serving 30,000 to 149,999 people), and three high volume (serving 150,000+ people). Thirteen courts were also selected as honorable mentions.

Low Volume Winners

- Alvin
- Bulverde
- Forest Hill
- Freer
- Glenn Heights
- Harker Heights
- Helotes
- Linden
- Magnolia
- Melissa

Medium Volume Winners

- Baytown
- College Station
- Harlingen
- La Porte
- Lufkin
- High Volume Winners
- Amarillo
- Arlington
- Irving

Honorable Mentions

- Bastrop
- Bryan
- Cedar Hill
- Conroe
- Edinburg
- Houston
- Johnson City
- Mesquite
- Midland
- Missouri City
- Rosebud
- Socorro
- Texas City

Award recipients were recognized at TMCEC's MTSI Conference, held March 27-29, 2017, at the Omni Southpark Hotel in Austin. To learn more about MTSI, please visit [www.tmcec.com/mtsi](http://www.tmcec.com/mtsi). The video of the award winners may be accessed at [www.tmcec.com/mtsi-awards/](http://www.tmcec.com/mtsi/mtsi-awards/).

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# PROCEDURAL FAIRNESS: BALANCING JUSTICE, PERCEPTION, AND COMPASSION

Mark Goodner  
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The scrutiny of municipal courts in Texas is at a peak right now. Multiple lawsuits brought against cities alleged the running of debtors' prisons in an effort to enforce judgments in fine-only cases.<sup>1</sup> Headlines proclaim that being poor in Texas is a crime punishable by jail.

These headlines and narratives echoed in the media create, confirm, and amplify fear among the public (especially the poor) about the fairness and the process in municipal courts. Those facing fine-only charges that do not have an ability to pay may fear that additional fees, fines, and costs will be added to their cases; their driver's licenses and car registrations will be suspended; arrest warrants will be issued; and that they will ultimately be jailed. They further fear that being jailed will lead to job loss, further poverty, stigma, and the loss of their kids. A seemingly common and "minor" crime suddenly seems insurmountable within a system that does not care about them; they feel powerless in a hopelessly "Us versus Them" situation. This fear and the perception of an unfair system can lead to nonappearance and a lack of communication with the courts. This limits the defendant's options as well as the opportunity for courts to consider all avenues of resolution.

How can municipal courts respond to a suspicious and fearful public without confidence in the judiciary? Procedural fairness may hold the answer.

## **What is Procedural Fairness?**

Procedural fairness can be explained as whether or not people experiencing the justice system *perceive* the procedures (and their treatment) as fair. This aspect of *perception* is akin to judicial ethics, as we must avoid impropriety as well as the perception of impropriety in our courts, under our Canons of Judicial Conduct. Often, it is easy to know that we are acting properly under the law in our courts, but it can be difficult to deal with *perceptions* of impropriety—yet, we must. Likewise, we cannot disregard the perception of the court user when evaluating our procedural fairness.

The four key components of procedural fairness that all judges and court personnel should keep in mind to ensure procedural fairness are as follows:

### *(1) Voice*

Court users want to be heard. Judges and court personnel should listen and strive to understand the situations, emotions, and needs of our court users.

### *(2) Respect*

Courts should treat all users with respect and dignity and should remain actively mindful of the individual case and defendant before them.

### *(3) Neutrality*

Courts should provide a neutral forum and equal treatment. This includes treating defending parties the same way we treat prosecuting parties.

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#### (4) Understanding

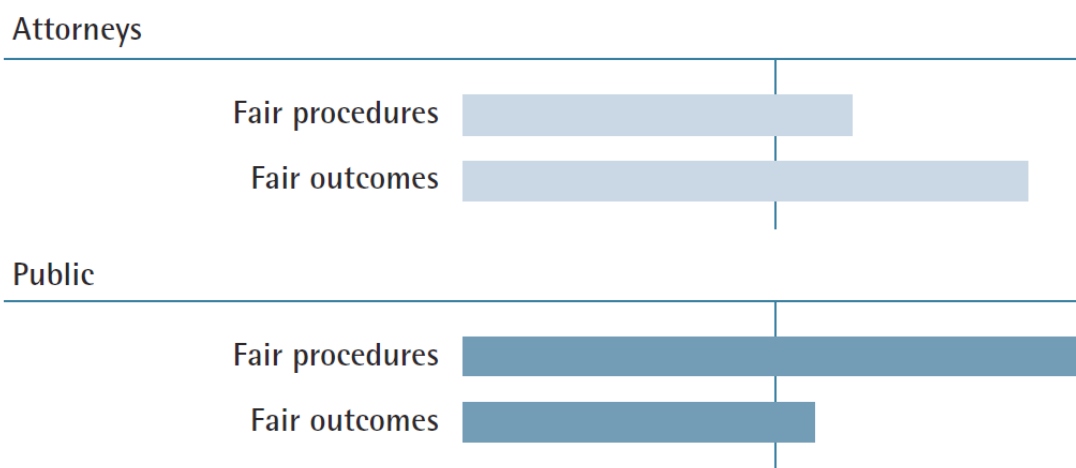
Courts embracing procedural fairness check with defendants and court users to make sure there is an understanding of the court and the process. This can include provided explanations verbally as well as offering clear written information. Perhaps most importantly, defendants are asked if they understand what is happening, and why.

In today's climate, rife with many perceptions (right or wrong) about the court system, our attempts to provide understanding may need to extend beyond the courthouse in order to reach those that steer clear of appearances due to fear. Information about the process, the rights of the defendant, and the steps to bring about resolution should be available on court websites and included in local newspapers.

### Why Procedural Justice?

In 2005, the National Center for State Courts surveyed over 2,400 members of the public and over 500 practicing attorneys in California regarding their views about the California court system.<sup>2</sup> One particularly compelling piece of data revealed in the survey dealt with fairness in procedures versus fairness in outcomes. While the public's perception of the fairness of court outcomes had significant influence on their overall evaluation of the courts, those perceptions consistently played second fiddle to the importance of procedural fairness by a wide margin.<sup>3</sup> Attorneys, on the other hand gave more weight to outcomes than to procedural fairness.<sup>4</sup> In Texas municipal courts, where the vast majority of defendants are pro se, this information is incredibly important. The public is much more concerned with how they are treated, how well the court listens, and how unbiased we are than they are with "winning" their case.

### Relative importance of significant factors on overall court approval



Relative influence is determined after differences due to race/ethnicity, age, gender, and education have been taken into consideration.

Procedural fairness is inextricably tied to our most important purposes as criminal courts. As articulated by Ernest Friesen, there are eight purposes of courts,<sup>5</sup> but the first two hold special significance with Texas municipal courts. The first purpose of courts is *To Do Individual Justice in Individual Cases*. In our courts, many of us deal with incredibly high volume. We see more people in our courts than in all other courts combined. With all of these cases coming before our courts, it is easy to think about "the forest," but lose sight of "the trees." Each of these cases involves individual persons, and they deserve individual justice. Each person should be heard and treated with appropriate respect and attention. This means keeping in mind that while the case may be one of dozens we deal with during the course of a day or week, this case is most likely a singular concern to the defendant. To do justice, we must apply the law to the facts before us—the facts of

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that specific, individual case as opposed to applying some general guidelines that may not be appropriate for the case.

The second purpose of courts is *To Appear to Do Individual Justice in Individual Cases*. This may sound odd at first. Absent the context of following the first purpose, it would sound empty or even false—as though *appearing* to be just was the concern more so than *being* just. Even with the context of the first purpose, this purpose can seem superfluous. If we are actually doing individual justice, then how important is it to appear to be doing justice? In the eyes of the public, it is the most important.

Appearing to do justice may take a bit more time. It may entail explaining why something is being done, or why something cannot be done. It may entail reassuring defendants of their rights and explaining how they are being protected in the court. Not every defendant will leave getting what they want, but every defendant should leave knowing that they were treated fairly and why the outcome turned out the way it did.

1. Suits have thus far proved unsuccessful. Suits have been dismissed against the cities of Amarillo and Austin, and motions to dismiss are pending in a case against El Paso. For more information related to debtors' prison claims, see Texas Appleseed, *Debtors' Prisons*, (accessed April 12, 2017).
2. National Center for State Courts, *Trust and Confidence in the California Courts: A Survey of the Public and Attorneys, Part I: Findings and Recommendations*, at 1 (2005).
3. *Id.* at 25.
4. *Id.*
5. See, *Competency: Purposes and Responsibilities*, <https://nacmcore.org/competency/purposes-and-responsibilities/> (accessed April 12, 2017).

## PROCEDURAL JUSTICE RESOURCES

### Articles:

“The End of Debtors’ Prisons: Effective Court Policies for Successful Compliance with Legal Financial Obligations,” 2015-2016 Policy Paper, Conference of State Court Administrators (COSCA), 2015-2016 Policy Paper. <https://goo.gl/4tJ3RQ>.

“Measuring Perceptions of Fairness: An Evaluation Toolkit,” Emily Gold LaGratta, Center for Court Innovation. [http://www.courtinnovation.org/sites/default/files/documents/P\\_J\\_Evaluation.pdf](http://www.courtinnovation.org/sites/default/files/documents/P_J_Evaluation.pdf). This is a tool kit for courts to use to measure court users’ perceptions of fairness. It includes three evaluation instruments: 1) Self-Assessment of Court Practices; 2) Courtroom Observation Instrument; and 3) Defendant Exit Interview. All three instruments are designed to be administered by court personnel or trained volunteers.

“Procedural Fairness: A Key Ingredient in Public Satisfaction,” Kevin Burke and Steve Leben, American Judges Association. [http://www.proceduralfairness.org/~media/Microsites/Files/procedural-fairness/Burke\\_Leben.ashx](http://www.proceduralfairness.org/~media/Microsites/Files/procedural-fairness/Burke_Leben.ashx). This provides an overview of perceptions of procedural fairness and practical considerations of what an individual judge, the court, the court administrator, as well as court leaders and judicial educators can do.

“Procedural Justice: Practical Tips for Courts,” Emily Gold LaGratta, Center for Innovation. [www.courtinnovation.org/sites/default/files/documents/P\\_J\\_Practical\\_Tips.pdf](http://www.courtinnovation.org/sites/default/files/documents/P_J_Practical_Tips.pdf). Outlines concrete communication strategies for courts to adopt that align with procedural justice. Reprinted on pages 17 – 20 of this issue of *The Recorder*.

“The Procedural Fairness Movement Comes of Age,” Steve Leben. *2014 Trends in State Courts*, National Center for State Courts, [http://www.ncsc.org/~media/Microsites/Files/Future%20Trends%202014/Procedural%20Fairness%20Movement%20Comes%20of%20Age\\_Leben.ashx](http://www.ncsc.org/~media/Microsites/Files/Future%20Trends%202014/Procedural%20Fairness%20Movement%20Comes%20of%20Age_Leben.ashx).

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“The Simple Idea that Could Transform U.S. Criminal Justice,” Tina Rosenberg, *The Guardian*, [proceduralfairness.org](https://www.theguardian.com/us-news/2015/jun/23/procedural-justice-transform-us-criminal-courts) or <https://www.theguardian.com/us-news/2015/jun/23/procedural-justice-transform-us-criminal-courts>.

“To Be Fair: Procedural Fairness in Courts,” Emily Gold LaGratta and Phil Bowen, Criminal Justice Alliance, <http://justiceinnovation.org/portfolio/to-be-fair-procedural-fairness-in-courts/>. This report sets out why procedural fairness matters for courts, explains the factors which affect whether people feel fairly treated, and puts forward some practical ideas on what courts can do to improve procedural fairness.

### **Websites:**

Procedural Fairness for Judges and Courts: American Academy for Judges hosts a website that offers a wide range of articles, a blog, conference information, best practices, and more. It seeks to bridge the gap between academic research and actual practice on issues related to procedural justice. This site is a collaborative effort by judges, researchers, and university professors. [www.proceduralfairness.org](http://www.proceduralfairness.org).

Center for Court Innovation: This website has several pages of interest to municipal courts: 1) Procedural Justice; 2) Community Court; 3) Bail Reform; 4) Mental Health; 5) Risk Assessment; and 6) Youth Court. On the Procedural Justice page, “Practical Tips for Courts” and the “Evaluation Toolkit” may be downloaded. It was developed in partnership with the U.S. Department of Justice’s Bureau of Justice Assistance and is continually updated with new materials. The Center for Court Innovation grew out of the Midtown Community Court that was created in 1993 to address low-level offending around Times Square in New York City. The Center also offers a series of podcasts on related issues available on iTunes. The website has a page of videos on related issues available on YouTube Playlist, ranging 3-75 minutes in length. [www.courtinnovation.org/topic/procedural-justice](http://www.courtinnovation.org/topic/procedural-justice).

CourTools: Developed by the National Center for State Courts, the materials helps courts to collect and present evidence related to performance measures. The first CourTool measures access and fairness. Directions are provided, as well as a survey form which can be used annually to obtain ratings from court users on the court’s accessibility and its treatment of customers in terms of fairness, equality, and respect. The self-administered survey is filled out by all leaving the courthouse on a typical day. Once tallied, the survey results can be used to improve court management practices. In six months or a year, the survey can then be re-conducted and results compared. NCSC provides an excel spreadsheet to help tally the results. [www.courtools.org/Trial-Court-Performance-Measures.aspx](http://www.courtools.org/Trial-Court-Performance-Measures.aspx).

National Task Force on Fines, Fees and Bail Practices: Contains resources to assist state courts to promote fair and efficient enforcement of the law and to ensure that no citizen is denied access to the justice system based on race, culture, or lack of economic resources. Resources include a bench card, model legislation, model language for citations, a list of resources, reports, and state activities are included. [www.ncsc.org/finesfees](http://www.ncsc.org/finesfees).

### **TMCEC/TMCA Model Resolution:**

The TMCEC/TMCA Board of Directors passed a model resolution in February 2017, based on a similar one developed by the Conference of Chief Justices and Conference of State Court Administrators. It is shown on page 21 of this issue of *The Recorder*. TMCEC suggests that courts adopt something similar and ask their judges and court support staff to commit to the principles and ideals contained within. Before signing the resolution, TMCEC suggests that the judges and staff meet to discuss the key components of voice, trust, neutrality, respect, understanding, and helpfulness. A short overview is found on the TMCEC Full Court Press blog at <http://blog.tmcec.com/> and in the article by Burke and Lehan that is listed on page 5. While TMCEC is confident that most municipal courts in Texas are committed to these principles, adopting the resolution

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provides an opportunity to publicly embrace these principles to draw attention of the city council and the public to the court's commitment.



**Court Communication** *continued from pg. 1*

The concept of notice is interwoven in our daily lives. Signs and letters offer notice in varying degrees from informational to urgent. Providers of notice include utility companies, governmental agencies, health organizations, landlords, banks, and the media. What is the purpose of notice? It communicates information someone needs to be aware of. *Merriam Webster* defines notice first as “a warning or intimation of something.” It allows a person to prepare.

Notice also has a technical legal meaning. With constitutional roots, it is a component of procedural due process (5th and 14th Amendments) as well as the right of the accused to be informed of the nature and cause of an accusation (6th Amendment). What follows is a discussion of 6th Amendment notice, the difference between civil and criminal due process under the 14th Amendment, and best practices for providing notice.

In criminal cases, under the 6th Amendment and Article I, Section 10 of the Texas Constitution, the charging instrument must inform a defendant of the charges brought against him or her so that he or she may prepare a defense.<sup>4</sup> Municipal court defendants generally receive such notice through issuance of a citation (or written promise to appear)<sup>5</sup> or the filing of a complaint and subsequent service of summons.<sup>6</sup> The requirements of this type of notice are not difficult to satisfy. Under Texas law, the defendant can only be brought to trial after a sworn complaint is filed against him or her.<sup>7</sup> The defendant, however, may waive the right to have a complaint made and may plead to or proceed to trial on the citation.<sup>8</sup> The defendant has a right to service of the complaint at least one day before trial.<sup>9</sup> If the defendant does not receive a copy of a complaint at least one day before trial, he or she is entitled to a continuance of at least one day, but likewise may waive this right.<sup>10</sup>

The complaint must use plain and intelligible language to establish all of the elements of an offense.<sup>11</sup> Language tracking the law or ordinance is generally sufficient.<sup>12</sup> The complaint must be specific enough to avoid being subsequently prosecuted for the same offense.<sup>13</sup> Article 45.019 of the Code of Criminal Procedure contains the statutory requirements of a complaint.

For many defendants, notice of the charge at the time of a traffic stop is all they receive, which, for purposes of case resolution, is much like being directed to the entrance of a maze, left to navigate a complex process alone. A citation minimally tells a defendant the offense charged and the time and place to appear. Is the court in a building by itself or will the defendant have to find the court upon entering the building? Where do they go once inside the court? What will happen there? Who can help them? What happens if they miss their court date? What are all the steps to resolving their case? What if they cannot pay? What are the options for paying? Are there options other than paying a fine? What if they have a defense? What if they do not speak English? What if they live in another city, state, or country? Of course, clerks have the answers to all these questions, but defendants carry the resulting weight of uncertainty long before seeing a clerk.

That uncertainty may have a historical origin. The Due Process Clause, found in both the 5th and 14th Amendments to the U.S. Constitution, prohibits the federal and state governments respectively from depriving anyone of “life, liberty, or property without due process of law.” The words “due process” suggest a concern with procedure, and that is how the Due Process Clause is usually understood.<sup>14</sup> Historically, the clause reflects the Magna Carta of Great Britain, King John's 13th century promise to his noblemen that he would act only in accordance with law and that all would receive the ordinary processes of law.<sup>15</sup> It also

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echoes the American colonies' strong insistence during the pre-Revolutionary period on observance of regular legal order.<sup>16</sup> Two concepts act as a guide for due process: courts must (1) operate within the law and (2) provide fair procedures.

That sounds simple, but, to the contrary, courts have struggled with the interpretation of the extremely general text of the due process clause for centuries. The struggle includes a divide between civil and criminal due process doctrine, the former having clear due process rules compared to the vague criminal approach. The conventional approach to due process is through the mechanisms of notice and a hearing. The U.S. Supreme Court, in *Mathews v. Eldridge*, 424 U.S. 319 (1976), formulated the framework for determining whether procedures are called for by due process. However, Justice Scalia opined that *Mathews* is inapplicable in criminal litigation.<sup>17</sup> The Court has historically discussed and applied due process very differently in criminal cases. The most notable for the discussion here is in the preliminary stages, before trial. At trial, a criminal defendant receives an impressive degree of due process constitutionally required to adjudicate guilt or innocence.<sup>18</sup> Many of these rights are provided by the express terms of the Bill of Rights. However, in the preliminary stages of the criminal process, the Court's constitutional model allows a closed process that leaves little room for a defendant's meaningful participation.<sup>19</sup> Perhaps that is a cause of some lackluster court procedures regarding due process in the early stages of a case. Harmful effects flow simply from being charged with a criminal offense, let alone a resulting arrest, seizure of property, or bond conditions prior to trial (if there ever is a trial).<sup>20</sup> In light of such potential deprivations of the accused person's liberty and property, courts should not be a looming presence in the community, shrouded in mystery.

A helpful framework in examining court procedures at all stages of a case is first, does the law require notice (and a hearing), whether by statute, the Constitution (U.S. or Texas), or case law, and second, does fairness require it? Citizens may expect to have the court offer fair procedures, whether or not those procedures have expressly been provided for in the law. Statutory notice is that required by a specific provision of law. For example, in Chapter 45 of the Code of Criminal Procedure (Municipal and Justice Courts), required notice includes notice of a complaint, notice prior to punishing a child for contempt,<sup>21</sup> notice of a show cause hearing upon failure to complete conditions of deferred disposition,<sup>22</sup> and notice to show cause why the evidence of completion of a driving safety course was not timely submitted to the court.<sup>23</sup> One of the express objectives of Chapter 45 is to provide fair notice to a person appearing in a criminal proceeding before a justice or municipal court and a meaningful opportunity for that person to be heard.<sup>24</sup>

Constitutionally required notice stems from the Due Process Clause, discussed supra. If the general language of that clause forms the bones, case law provides the meat of what due process requires at any stage of a case. U.S. Supreme Court due process case law was discussed supra. In Texas, the Court of Criminal Appeals has cited the *Mathews* framework (civil notice-and-a-hearing approach) less than a handful of times.<sup>25</sup> The framework instead is when there is a deprivation of liberty or property, whether it is fundamentally unfair or arbitrary.<sup>26</sup> The touchstone of due process in criminal cases in Texas is fundamental fairness.<sup>27</sup>

In light of fundamental fairness, communicating with defendants at all stages of the case in order for them to resolve their case is in accordance with due process and judicial efficiency. What can courts do to help defendants navigate and resolve their cases? They need more than minimal information and they need it throughout the life of the case. The answer is not adding to the citation, which currently resembles an ancient scroll, but that would be better than nothing. The answer could be as simple as a postcard or as intricate as a remote kiosk.

Do you wonder what the perception of your defendants is regarding access and notice? Ask them. A survey, like the one administered by the Lewisville Municipal Court, is a valuable tool for collecting information relevant to public perception on a myriad of court procedures.



According to the most recent public poll by the National Center for State Courts (NCSC), innovation is a consistent weakness for state courts.<sup>28</sup> Specifically, the public expects courts to adapt to new technologies to meet their needs.<sup>29</sup> The perception is that state courts are not effectively using technology to improve their own operations or how they interact with the people they serve.<sup>30</sup> That is not true for all courts. Sugar Land Municipal Court uses a QR code on its electronic tickets, that, when scanned with a smart phone, accesses the court's website. On the website, defendants can view and/or pay violations filed in that court without having to call the court. Defendants have the option to pay, request a driving safety course, or request an extension of time to pay on the court's website. Sugar Land Municipal Court also created a brochure titled *Taking Care of Your Ticket*, which has information on driving safety courses and deferred options in addition to clear and easy instructions for paying.<sup>31</sup> Officers distribute the brochure to any individuals issued a citation at the time of the traffic stop. The brochure is also posted on the court's website.



Defendants can access the San Antonio Municipal Court through kiosks throughout the city, including the court itself and local grocery stores. After receiving a citation, a defendant may enter a plea of guilty or nolo contendere at a video screen in a public place. The video screen is connected first to a clerk to prepare the case, and then to a judge to give required admonishments and consider requests for payment options, dismissal through deferred disposition, or a driving safety course, if requested and appropriate. A defendant may also make payment by major credit card.

The court's website and signage are great opportunities to communicate appropriate information with defendants, those that come to court and those who do not. Consider including the following on the court's website: court hours and location, a map and directions for the court, contact information, jurisdiction of the court, links to the city's code of ordinances and state and federal law-related information, fine and court costs schedule,<sup>32</sup> court procedures, consequences for failing to appear, and other relevant information to resolving a case.<sup>33</sup> For signage, walk in the shoes of the defendant as he or she enters the court. Is the correct door clearly marked? Is it clear where to go upon entering the court?

For example, the Midland Municipal Court uses color coded signs within the court, specifically purple and green. A large monitor located between the building's two courtrooms on the second floor displays a color coded directory and points in the general direction of either the purple or green courtroom. A large group seating area directly outside each courtroom is color coded either purple or green to match that courtroom's respective interior. Individuals can see the purple or green seating area from both the monitor directory and as they enter the second floor from either the elevator or staircase landing. The monitor displays the daily dockets as well. This color coding, along with other intentional court design improvements,<sup>34</sup> "has been very effective in reducing the time individuals spend at the court," according to Presiding Judge for the Midland Municipal Court, Sharon Hatten, and has resulted in "a significant and noticeable difference in people's demeanor." Similarly, the Amarillo Municipal Court uses color coded signs to clearly direct people where to go. Improving access to the court ensures a meaningful opportunity to be heard.

#### Useful Website Information for Defendants:

- Court procedures
- Defendants' rights
- Options for entering a plea and appearing in court
- Fine and court costs schedule
- Local rules on conduct and attire
- Special procedures for juveniles and parents
- Teen court information
- Tips for pro se defendants
- How to contact an attorney
- Consequences of failure to appear
- How to show proof for compliance dismissals
- Requesting a driving safety or motorcycle operator course
- Payment options and community service
- Affidavit for inability to pay
- Available alcohol or tobacco awareness courses
- Appeal rights
- Legal terminology
- FAQs

Notice becomes increasingly important when defendants are not able to pay the fine and court costs and default in satisfying the judgment, whether by missing payments or failing to do community service. In Midland, defendants placed on payment plans provide multiple ways for the court to contact them. In the event of a default, the court sends notice by mail and, if provided, by email and/or text message.

Defendants need to know, among other things, how to see the judge, what options are available for satisfying the judgment (alternative means), and the consequences for failure to appear or default. Some defendants do not appear in court for fear of being arrested. If your court has a policy, written or unwritten, that defendants coming in to talk about their case will not be arrested on warrants for the underlying charge, communicate that policy on a postcard, brochure, sign, and the court's website.<sup>35</sup> For defendants that default in satisfying the judgment, though not statutorily required, providing notice and a hearing before issuing a *capias pro fine* (arrest being a deprivation of liberty) is consistent with fundamental fairness.<sup>36</sup> Such notice should include the date and time, the total amount due, what will happen at the hearing, necessary documentation the defendant should bring, and the consequences for not attending the hearing. Though a hearing is statutorily required prior to commitment for failing to discharge a judgment under Article 45.046, this generally occurs post-arrest, too late for such information to be helpful.

Rethinking Court Access:

The Midland Municipal Court has a child's waiting area to ensure that defendants with small children can still access the court.

Examine your procedures throughout the life of a case. Are there any barriers to accessing the court? Do defendants have all the information they need? Are the procedures fundamentally fair? Do defendants receive notice of what to do prior to a deprivation of liberty? Court procedures that comport with due process remove the shroud of mystery and restore the fair and efficient administration of justice.

1. David Ropeik, "Why Do We Keep Predicting the Future if We Are So Often Wrong?," *Psychology Today*, <https://www.psychologytoday.com/blog/how-risky-is-it-really/201101/why-do-we-keep-predicting-the-future-if-we-are-so-often-wrong> (January 3, 2011).
2. *Id.*
3. *Id.*
4. *State v. Moff*, 154 S.W.3d 599, 601 (Tex. Crim. App. 2004).
5. Article 14.06, Code of Criminal Procedure. See also, Section 543.005, Transportation Code.
6. Article 23.04, Code of Criminal Procedure.
7. Article 45.018, Code of Criminal Procedure.
8. Article 27.14(d), Code of Criminal Procedure.
9. Article 45.018(b), Code of Criminal Procedure.
10. *Id.*
11. *Bynum v. State*, 767 S.W.2d 769 (Tex. Crim. App. 1989).
12. *Kaczmarek v. State*, 986 S.W.2d 287 (Tex. App.—Waco 1999, no pet.).
13. *Bynum*, 767 S.W.2d at 779.
14. The focus of this article is on procedural due process as opposed to substantive due process.
15. Peter Strauss, *Due Process*, Legal Information Institute, Cornell University Law School, <https://www.law.cornell.edu/wex/due-process> (accessed April 14, 2017).
16. *Id.*
17. *Hamdi v. Rumsfeld*, 542 U.S. 507, 575-76 (2004) (Scalia, J., dissenting) (arguing that *Mathews* "has no place" when the Constitution and common law prescribe the elements of process due, as in criminal cases).
18. Niki Kuckes, *Civil Due Process, Criminal Due Process*, Yale Law & Policy Review, Vol. 25, Iss. 1 p.19 (2006).
19. *Id.* p. 20.
20. See, e.g., *United States v. Lovasco*, 431 U.S. 783 (1977) ("[A] formal accusation may interfere with the defendant's liberty ... disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends." (internal quotation marks omitted)); *United States v. Marion*, 404 U.S. 307, 320 (1971) ("Arrest is a public act that may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends.").
21. Article 45.018(b), Code of Criminal Procedure.
22. Article 45.051, Code of Criminal Procedure.
23. Article 45.0511, Code of Criminal Procedure.
24. Article 45.001, Code of Criminal Procedure.
25. See, for example, *State ex rel. Young v. Sixth Judicial Dist. Court of Appeals at Texarkana*, 236 S.W.3d 207 (Tex. Crim. App. 2007); *Rey v. State*, 897 S.W.2d 333 (Tex. Crim. App. 1995); *Shockley v. State*, 717 S.W.2d 922 (1986); *Hunter v. State*, 1985 Tex. Crim. App. LEXIS 1726 (Tex. Crim. App. October 23, 1985).
26. *Bearden v. Georgia*, 461 U.S. 660, 666 (1983).
27. *Euler v. State*, 218 S.W.3d 88, 91 (Tex. Crim. App. 2007).
28. *The State of State Courts: A 2016 NCSC Public Opinion Survey*, National Center for State Courts, <http://www.ncsc.org/Topics/Court-Community/Public-Trust-and-Confidence/Resource-Guide/2016-State-of-State-Courts-Survey.aspx> (December 12, 2016).
29. Fifty-two percent of those polled agreed that just like any business, courts must change with the times to meet the needs of their customers and to keep up with new innovations. Memo from GBA Strategies to the National Center for State Courts, *Annual National Tracking Survey Analysis*, (December 12, 2016) (available at [http://www.ncsc.org/~media/Files/PDF/Topics/Public%20Trust%20and%20Confidence/SoSC\\_2016\\_Survey\\_Analysis.ashx](http://www.ncsc.org/~media/Files/PDF/Topics/Public%20Trust%20and%20Confidence/SoSC_2016_Survey_Analysis.ashx)).
30. *Id.*
31. City of Sugar Land Municipal Court, *Taking Care of Your Ticket*,

<http://www.sugarlandtx.gov/DocumentCenter/View/667> (accessed April 10, 2017).

32. For due process purposes, defendants should have the opportunity to talk to the judge about the fine, especially regarding ability to pay. If your court posts a fine schedule, it should include a caveat that a defendant is able to talk to the judge (at a hearing for example) about the fine.
33. See, The Municipal Court Clerk Study Guide, Level II, pp. 22-23 (2015) (available at <http://tmcec.com/resources/clerk-study-guides/>). Chapter 9, *Technology for Public Information about the Law*, has valuable information for developing a court website and best practices.
34. Design improvements include the direction individuals flow in and out of the court (entering the courtroom through the front doors

and exiting after seeing the judge through a different side door, which leads straight to the processing area downstairs) and a single dedicated processing area for the clerks, with seating for defendants waiting to see a clerk and for defendants at the window. Clerks are seated as well, resulting in efficient and respectful treatment of each defendant. There is also a separate room where defendants can go and discuss their financial, medical, or other sensitive issues in a more private setting.

35. “‘Safe Harbor’ Policies: Why Arrest is Not Always Best,” Special Edition of *The Recorder*, p. 26 (October 2016).
36. “In the Shadow of *Bearden*, Guidance from Case Law, the Texas Code of Criminal Procedure, and the Case for ‘Show-Cause’ Hearings Prior to Issuing a Capias Pro Fine,” Special Edition of *The Recorder*, pp. 23-24 (October 2016).



### Clerk Certification *continued from pg. 1*

rather, they reflected basic principles ingrained in American law such as due process and equal protection. In the Department’s assessment, there appeared to be either a lack of understanding of the principle or a misapplication of the law in certain jurisdictions around the country.

In Texas, municipal court clerks have been demonstrating knowledge of these basic constitutional principles for more than 20 years through the Municipal Court Clerk Certification Program. This unique program is administered through the Texas Municipal Courts Education Center, one of the largest organizations of its kind in the United States, in cooperation with the Texas Court Clerks Association, Texas Municipal Courts Association, and Texas State University. The Certification Program includes unique attributes when compared to national programs, such as an actual assessment of participants in the form of objective tests prior to certification, evaluation based on core competencies, and the requirement for continuing education in order to maintain the certification. To date, 379 Texas cities have clerks participating in the program.

### Every Aspect of Municipal Court

The Certification Program is comprised of three levels and covers not only legal concepts that are vital to the American criminal justice system, but also the practical application of that law. Broad areas, such as open records, are delineated and explored from the municipal court perspective. In competencies such as *Records and Caseflow Management*, a court clerk will be required to understand not only the Public Information Act as it pertains to municipalities, but also the common law right of inspection and Rule 12 of the Texas Rules of Judicial Administration as they specifically pertain to municipal court records, and when each applies. This level of knowledge is fundamental in any municipal court; but with today’s laser focus on the criminal justice system as a whole, it is essential.

Globally, the Level I and Level II curriculum is meant to touch on every area that a criminal defendant may come into contact with in municipal court. It is possible, for example, for a municipal court clerk to track a defendant’s contact with the court beginning with the traffic stop (*Traffic Law*), proceed through trial (*Trial Processes*), and then final judgment (*Post-Trial Processes*). Along the way, the program references legal and ethical issues that every municipal court clerk should be aware of, such as indigent defendants, juveniles in court, and the dangers of ticket fixing.

Certified Texas Court Clerks
Level I: 656
Level II: 521
Level III: 58

An assessment is imperative in evaluating a participant in any professional program, and a court clerk must demonstrate a basic comprehension of every aspect of municipal court to proceed through the program.

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Certified municipal court clerks are tested on a number of areas, or competencies, including areas addressed in the Department of Justice memo. <sup>2</sup> These core competencies are broken into parts by concept in the certification study companion guides. Broadly, they include:

### **Meaningful Notice, Due Process, and Court Access<sup>3</sup>**

A fundamental concept of American law is that criminal defendants are provided due process of the law. This is a broad concept embodied in the 5th and 14th Amendments to the U.S. Constitution, but it essentially provides for fair procedures when depriving a person of life, liberty, or property. This generally includes notice of a charge and the opportunity to be heard. In municipal courts, this may broadly include consequences such as the imposition of fines and fees, license suspensions, and warrants of arrest. Level I and Level II certified municipal court clerks are required to demonstrate understanding of these concepts in focus areas such as the *Role of the Clerk*, *Trial Processes and Procedure*, and *Equal Justice Under the Law*.

### **Indigency and Alternatives to Incarceration<sup>4</sup>**

State and federal law provide protections for indigent defendants charged with criminal offenses. As the Department of Justice pointed out in their memo, the Supreme Court has held that courts must not incarcerate a person without first conducting an indigency determination and establishing that the failure to pay was willful.<sup>5</sup> The Texas Court of Criminal Appeals has even gone so far as to declare this to be a mandatory judicial directive.<sup>6</sup> In addition, for more than 40 years, Texas has required courts to provide alternative means to the indigent prior to any commitment.<sup>7</sup> This is far reaching, with “alternative means” in Texas now including community service, installment payments, and tutoring.<sup>8</sup> Level I and Level II certified municipal court clerks are required to demonstrate understanding of these concepts in focus areas including *Overview of Processing Cases*, *Charging and Pre-Trial*, and *Post-Trial Procedure*. A clerk studying for the Level I test will have a deeper understanding of what these concepts mean when they learn about Preston Tate, the defendant sentenced to a prison farm for traffic offenses.<sup>9</sup>

Three Quick Facts
San Antonio has the most Level I (60)
Houston has the most Level II (25)
Webster has the most Level III (2)

### **Protections Against Unconstitutional Practices<sup>10</sup>**

To the general public and defendants, municipal court clerks may literally be the face of the court. The old truism that more people come into contact with municipal courts than all of the other courts in the system remains true today; and with that, a court clerk’s conduct reflects on the city, court, and criminal justice system as a whole. Level I and Level II certified municipal court clerks are required to demonstrate understanding of this concept upon completing certification, but particularly in *Court Ethics*. In this area, clerks are required to recognize the importance of the Canons of Judicial Conduct and ethical behavior. Companion classes offered through TMCEC further explore ethical dilemmas, implicit bias, and what “good customer service” actually means in a court setting.

### **Knowing the Law Today and Tomorrow: Continuing Education**

As part of the program, certified clerks are required to stay current on the law. It is one thing to learn the law as it stands today, but it is quite another to maintain that level of knowledge following legislative changes or court decisions. The Legislature has recently made changes, for example, that have been both broadly sweeping (when the Legislature overhauled and generally de-criminalized truancy) and narrowly

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administrative (when the Legislature removed the offense of fail to display inspection and replaced it with the “Texas Two Step”). The “Two Step” repealed a common criminal offense and “Truancy” drastically changed a municipal court’s jurisdiction with regard to juveniles. Indeed, although often characterized as “minor infractions” or “small fry” offenses, fine-only misdemeanors can have far reaching legal consequences of which courts must stay abreast.<sup>11</sup> Municipal courts currently have jurisdiction over offenses with serious implications such as Theft, Assault Family Violence, and Driving Under the Influence by a Minor.

To this end, in order to maintain certification, every Level I and Level II certified court clerk is required to attend 12 hours of continuing judicial education every year. Those certified at Level III are required to attend 20 hours annually. Renewal hours are narrowly tailored to provide education in relevant areas of the law. Specific renewal hour providers include: TMCEC, TMCA, TCCA, the National Center for State Courts, and the National Association of Court Managers.

### **The Certified Municipal Court Clerk (CMCC)**

Upon completion of the Level III requirements, a court clerk receives the title, Certified Municipal Court Clerk. This level prepares court clerks for a management role and assesses the clerk on competencies including knowledge of management principles, responding to the media, and leadership skills. The purpose is to create “court leaders” that will work with the judiciary and manage tomorrow’s courts. Ultimately, these leaders are tasked with administering a court that runs efficiently, ethically, and within the bounds of the law. The curriculum includes reading on *Diversity, Teamwork and Motivation*, and *Managing Change*. Further, participants are required to be assessed on everything they have learned up to that point, completing a capstone journal and graduating from the Level III Assessment Clinic. It is not easy, but successful clerks join only 71 other court leaders that have ever completed the program.<sup>12</sup>

The Department of Justice memo may have been a wakeup call for some courts across the country. In Texas, however, we can look to programs in place to address potential issues in our municipal courts. Mirabeau B. Lamar’s quote is as true now as it was in 1838, “a cultivated mind is the guardian genius of democracy.”

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1. Mirabeau B. Lamar is known as the “Father of Texas Education” for his contributions to public education. Lamar’s efforts ultimately resulted in an endowment funding public schools in the state. The quote referenced here is also the motto of The University of Texas (Disciplina Praesidium Civitatis). Texas State Historical Association, Handbook of Texas, <https://tshaonline.org/handbook/online/articles/fla15> (accessed April 12, 2017).
  2. The Clerk Study Guide, Level I and II (2015), (available at <http://tmcec.com/resources/clerk-study-guides/>).
  3. These areas are also the “basic constitutional principles” bulleted in the Department of Justice memo. Letter from the U.S. Department of Justice Civil Rights Division Office for Access to Justice to state and local courts, Dear Colleague Letter Regarding Law Enforcement Fees and Fines, p.2 (March 14, 2016) (available at <https://www.justice.gov/crt/file/832461/download>).
  4. *Id.*, at p. 3-4.
  5. *Bearden v. Georgia*, 461 U.S. 660, 103 S. Ct. 2064 (1983).
  6. *Gipson v. State*, 428 S.W.3d 107, 110 (Tex. Crim. App. 2014).
  7. *Tate v. Short*, 401 U.S. 395, 91 S. Ct. 668 (1971).
  8. Article 45.041(b-2), Texas Code of Criminal Procedure; Article 45.049, Texas Code of Criminal Procedure; Article 45.0492, Texas Code of Criminal Procedure.
  9. The Clerk Study Guide, Level I, “The Case of Preston Tate,” p. 6-12.
  10. The Department of Justice memo references “unconstitutional practices by court staff and private contractors” as the final bulleted principle. While the memo references the Model Code of Judicial Conduct, Texas municipal court clerks are trained on the Texas Code of Judicial Conduct, as overseen by the Texas Commission on Judicial Conduct, and ethical behavior throughout each step of the process.
  11. See “Misunderstanding Fine-Only Misdemeanors,” *The Recorder* (October 2016).
  12. In the history of the Certification Program, only 71 clerks have ever received the title of Certified Municipal Court Clerk. Of these, 58 are currently active within Texas municipal courts.

# RESOURCES FOR YOUR COURT

## Using Surveys to Improve Court Operations

A court's authority and legitimacy is often derived not just by its actions, but in the perceptions by the court users and the public. This is especially true in the area of using fair procedures and treating people fairly. Procedural fairness involves giving the opportunity for defendants to tell their side of the story; treating both sides equally; treating people in a courteous and respectful manner; and demonstrating trustworthiness through listening, expressing concern for court users; and explaining decisions.

Some Texas municipal courts have service/satisfaction surveys on their websites. Others, such as New Braunfels, have a link to the survey on the bottom of their emails.

Last Fall, the Lewisville Municipal Court used the *Access and Fairness* survey in their courts. "We called ours *Judge the Court*. The survey helped us identify our strengths and weaknesses and created a benchmark for our performance. We shared the results with our mayor and council which helped express our commitment to providing the highest level of service to our community," reports Presiding Judge Brian Holman of Lewisville. His courts used the National Center for State Courts (NCSC) survey entitled Access and Fairness (See, August 2016 issue of *The Recorder* or <https://googl/MRLUT6>). Clerks interviewed court users over the period of a week.

Three new NCSC survey documents have been recently developed and can be used in municipal courts, in addition to the original survey Access and Fairness. The new surveys are shown below:

- Ensuring Fairness in Legal Financial Obligations
- Management of Legal Financial Obligations
- Fair Practices for Legal Financial Obligations

These surveys are part of CourTools, developed by the NCSC and are designed to enable courts to collect and present evidence of their success in meeting the needs and expectations of court users.

[[www.courtools.org/trial-court-performance-measures.aspx](http://www.courtools.org/trial-court-performance-measures.aspx)] These surveys are a form of performance measures and can be used in goal setting, improving court processes and communications, and staff training to ensure the fair administration of justice.

Evidence-based court management requires leadership, risk tolerance, and a willingness to change if so needed. TMCEC has received funding from the State Justice Institute to pilot surveys to measure treatment of court users. If your court is interested in participating, contact Regan Metteauer ([metteauer@tmcec.com](mailto:metteauer@tmcec.com)) at TMCEC. TMCEC is seeking courts from all areas of the state and of varying sizes to participate in the survey.

### A Sampling of Courts with Service/Satisfaction Surveys:

- **Arlington:** <https://www.surveymonkey.com/r/H32PMFN>
- **Austin:** <http://www.austintexas.gov/online-form/austin-municipal-court-customer-service-survey>
- **Cedar Park:** <https://www.surveymonkey.com/r/WSDR2ZX>
- **El Paso:** <https://www.elpasotexas.gov/municipal-courts/customer-survey>
- **Shavano Park:** <http://www.shavanopark.org/NCIPALCOURTSURVEY.pdf>
- **McKinney:** <https://www.mckinneytexas.org/FormCenter/Municipal-Courts-16/McKinney-Municipal-Court-Satisfaction-Su-132>

## 2017 GCAT Conference

The annual conference of the Government Collector’s Association of Texas (GCAT) will meet in San Antonio on May 8-11, 2017 at the Drury Inn & Suites on the Riverwalk. The conference will include sessions on the new changes to the Collection Improvement Program and legislative issues affecting collections in district, county, justice, and municipal courts. For more information, go to: <http://www.govcat.net/events.html>.

## 2017 TMCA Annual Meeting & Educational Program

The annual meeting and judicial education program of the Texas Municipal Courts Association (TMCA) will occur on August 24-26, 2017 in San Marcos at the Embassy Suites. Members: Watch your inbox or the TMCA website [<http://www.txmca.com/>] for information on how to register and on the awards program. This year, TMCA is adding an outstanding prosecutor award.

## Principles of Civility

Developed by the National Judicial College in Reno, Nevada, “Principles of Civility: Promoting Public Trust and Confidence” provides four principles of civility and a standard of conduct for judges, attorneys, court staff, parties, jurors, and witnesses that exceeds the minimum required under the rules of professional conduct for lawyers and canons of judicial ethics. The bench card for judges found on page 16 of this issue of *The Recorder* is an example. This would be an excellent reading for judges and court staff, followed by a short discussion session. [http://www.judges.org/wp-content/uploads/Principles-of-Civility\\_NJC\\_2013.pdf](http://www.judges.org/wp-content/uploads/Principles-of-Civility_NJC_2013.pdf).

## Survey on Practices in Your Court

Please take a survey on solutions such as Safe Harbor Policies, Walk-In Dockets, and Hardship Dockets. <https://goo.gl/forms/MgyK3pyApar6xCAn1>.

### TMCEC Personal Academic Profile

Your personal profile has many of the answers you seek!

TMCEC constituents are persons who are currently employed by a city and are appointed or sworn officers of a Texas Municipal Court. This includes judges, court support personnel, prosecutors, Juvenile Case Managers and Bailiff/Warrant Officers.

Each constituent has a personal profile that shows important details about a person’s academic records. This information is just a click away and may provide the answers to the most common administrative questions.

[Log in](#) and click on the tabs (words) to display the following information:

- Upcoming Events: Events that you are currently registered to attend.
- Past Events: Events you have previously attended and a printable certificate for your attendance
- Transcript: Chronological list of your academic record
- Clerk Certification – The status of your certification
  - Renewal years & dates of each level
  - EXAM Status
  - You can also upload renewal applications with information from other providers.
  - Your renewal status and the status of your certification exam

It is NOT necessary for you to file a “Renewal Application” if you are a Certified Court Clerk Level I or II AND have attended a 12-16 hour TMCEC program. This will be done automatically for you within 2-4 weeks following the proper completion of your “Record of Attendance” at the end of the program.

The screenshot displays a user interface for the TMCEC Personal Academic Profile. At the top, there are navigation tabs: 'About Me', 'My Courts', 'Committee/Faculty', 'Clerk Certification', 'IDEA', and 'Upcoming Events'. The 'Clerk Certification' tab is selected. Below the tabs, there are two sub-tabs: 'Past Events' and 'Transcript'. The main content area is divided into two sections: 'Certification' and 'Certification Renewal'. The 'Certification' section shows a table with columns for 'Certification Level', 'Level I Certification Date', 'Level II Certification Date', and 'Level III Certification Date'. The 'Certification Pending' status is 'No', and the 'Non Compliant' status is also 'No'. The 'Certification Renewal' section shows a table with columns for 'YEAR' and 'RENEWAL STATUS'. The table lists renewal years from 2011-2012 to 2016-2017, all with a 'Yes' status. At the bottom, there is a 'Renewal Application' section with a note: 'Please submit your renewal application and certificate of attendance for the certification program below.'

# The Principles of Civility

## Judges

- 1 Prioritize courtesy.** The judge is perceived as a leader in and out of the courtroom. The judge should model respect and courtesy at all times. Through his or her own behavior, the judge sets the tone with court staff, attorneys, parties, jurors, and witnesses. Further, the judge has the responsibility to address incivility in a positive manner whether in chambers, the courtroom, the courthouse, or the community. It is important for the judge to be consistent, keep a calm demeanor, be engaged in the process, and practice good listening skills. In particular, judges need to practice using procedural fairness with regard to the parties, attorneys, and witnesses as well as in addressing and responding to other judges. According to Tom Tyler, procedural fairness is attained when the judge conducts proceedings so that the parties have a *voice* to tell their story, perceive that the court system is *neutral*, are treated with *respect*, and believe the judge is *trustworthy* and sincerely trying to help them.<sup>1</sup>

*“The rule of law cannot effectively exist without civility.”*

**HON. WILLIAM DRESSEL**  
*(Colorado, ret.)*
- 2 Be timely.** Timely justice is best honored when all matters begin and end according to a reasonably-set schedule. Maintaining a well-run schedule with accommodation as required shows respect to court staff, attorneys, jurors, parties, and witnesses. It is also essential that judges make decisions, rule on motions, and issue opinions timely and keep all advised when a matter taken under advisement will be addressed.
- 3 Preserve and improve the law.** This principle of civility is especially critical for judges in their leadership role. As leaders, it is important that they take a strong role in ensuring that all persons receive fair, timely and equal treatment under the law. Judges should be taking the message to the community that uncivil behavior does not achieve a better justice. The courts can model that disagreements can be addressed in a civil manner. Judges can join with attorneys to initiate community outreach about civility by promoting justice-improvement initiatives focusing on positive aspects of the court’s work and engage in much needed civic education to social and community organizations.
- 4 Communicate.** Clear, concise, and informative communication from the judge is imperative to procedural fairness. As stated earlier, procedural fairness is attained when the judge conducts proceedings so that the parties have a *voice* to tell their story, perceive that the court system is *neutral*, that they are treated with *respect*, and believe the judge is *trustworthy* and sincerely trying to help them.<sup>2</sup> It is the judge’s responsibility to lay out the expectations and set the agenda for all persons involved with in- and out-of-court processes, procedures, and timelines. The judge needs to clearly and concisely communicate the expectations of the court.

1. Tom R. Tyler, Ph.D., Procedural Justice in the Courts 44 COURT REV. 26 (2009).  
2. Tom R. Tyler, Ph.D., Procedural Justice in the Courts 44 COURT REV. 26 (2009).

Note: This is an excerpt of a bench card developed by the National Judicial College in Reno, Nevada, “Principles of Civility: Promoting Public Trust and Confidence”. There are also similar recommendations for attorneys, court staff, parties, jurors, and witnesses. [http://www.judges.org/wp-content/uploads/Principles-of-Civility\\_NJC\\_2013.pdf](http://www.judges.org/wp-content/uploads/Principles-of-Civility_NJC_2013.pdf)



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# PROCEDURAL JUSTICE: PRACTICAL TIPS FOR COURTS

Emily Gold LaGratta

Deputy Director of Training and Technical Assistance; Director of Procedural Justice Initiatives

Research shows that when litigants believe the court process is fair, they are more likely to comply with court orders and the law generally. This concept – called “procedural justice” – refers to the perceived fairness of the procedures and interpersonal communications that defendants and other litigants experience in the courthouse and courtroom, as distinguished from distributive justice, which refers to the impressions derived from case outcomes (*i.e.*, whether the litigant ultimately “won” or “lost” the case). Numerous studies have linked procedural justice to increased compliance with court orders and reduced recidivism.<sup>1</sup>

This resource was developed as part of a multi-year collaboration involving the Center for Court Innovation, National Judicial College, and the U.S. Department of Justice’s Bureau of Justice Assistance, with guidance from a national advisory board of judges, court administrators, academics, and others. “Practical Tips for Courts” is a compilation of communication strategies that can be used to promote perceptions of fairness. Each of the suggested practices is tied to one or more of these critical dimensions of procedural justice: voice (litigants’ perception that they have an opportunity to be heard), respect (litigants’ perception that the judge and other court actors treat them with dignity), neutrality (litigants’ perception that decisions are made without bias), and understanding (litigants’ comprehension of the language used in court and how decisions are made).

This resource is not intended to be comprehensive but rather a sampling of the types of interactions that can enhance perceptions of fairness. For more information about procedural justice and the Improving Courtroom Communication project, please visit [www.courtinnovation.org/proceduraljustice](http://www.courtinnovation.org/proceduraljustice).

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## COURTHOUSE ENVIRONMENT

### Security screenings

Ensure that all security measures, such as checkpoints and/or metal detectors, are administered with respect. Court officers should be encouraged to convey procedures orally and through signage that uses clear and respectful language.

### Signage

Examine facility signage throughout the courthouse for comprehensibility. Signs should use an easy-to-read font type and size, written in plain language, and be posted at eye level. Limit the use of all capital letters and bold typeface, except for short titles and phrases.

### Information desks

Clearly designate the hours of the information desk. Re-route court participants to another source of information when the desk is closed. Anticipate and address frequently asked questions with pre-printed materials.

### Accessibility

Clearly designate handicap-accessible entrances and elevators. Ensure that oral and written instructions have ADA compliant versions for the visually and hearing impaired.

### Décor

Opt for landscape pictures or other culturally neutral images.

### Feedback

Provide court users with an opportunity to offer regular feedback via a comment box or other method. You may also consider asking community members to help audit the navigability of the courthouse.

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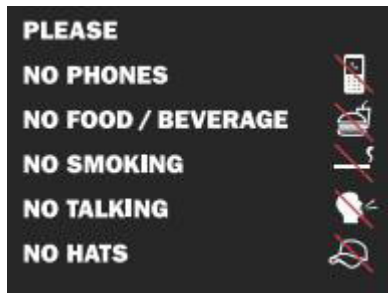
## COURTROOM MANAGEMENT

### Post clear courtroom rules

Rules should be simple, clearly posted, and consistent throughout the courthouse. Efforts should be made to use respectful language. Whenever possible, rules should be communicated in images and words, using

Spanish or other common secondary languages as needed. Court staff should enforce rules using a respectful tone of voice.

EXAMPLE:



**□ Explain the reason for late starts**

Court sessions should begin promptly at the time scheduled to demonstrate respect for everyone’s time. Thank audience members for being on time. If court does not start on time, court staff should tell the audience the reason for the delay and the anticipated start time.

**□ Explain the order in which cases will be called**

Giving information about the order in which cases will be called demonstrates respect for those who are waiting, including friends and family who are hoping to see a detained defendant.

Consider explaining why certain cases are called first to reduce the risk that the practice will be perceived as showing favoritism or bias.

EXAMPLE: “Thank you for being here on time. We will begin court as soon as your attorneys have arrived. I appreciate your patience.”

**DURING EACH COURT APPEARANCE**

**□ Introduce yourself**

Judges should introduce themselves at the beginning of proceedings, making eye contact with litigants and other audience members. Court staff can recite the basic rules and format of the court proceedings at the beginning of each court session.

Written procedures can be posted in the courtroom to reinforce understanding.

**□ Greet all parties neutrally**

Judges should address litigants and attorneys by name and with eye contact. They should demonstrate neutrality by treating all lawyers respectfully and without favoritism. This includes minimizing the use of jokes or other communication that could be misinterpreted by court users.

**□ Address any timing concerns**

If court will be particularly busy, judges should acknowledge this and outline strategies for making things run smoothly. This can help relax the audience, as well as make the process seem more transparent and respectful.

EXAMPLE: “I apologize if I seem rushed. Each case is important to me, and we will work together to get through today’s calendar as quickly as possible, while giving each case the time it needs.”

**□ Explain extraneous factors**

If there are factors that will affect a judge’s conduct or mood, they should consider adjusting their behavior accordingly. When appropriate, judges should explain them to the audience. This can humanize the experience and avoid court users’ making an incorrect assumption.

EXAMPLE: “I am getting over the flu, so please excuse me if I look sleepy or uncomfortable.”

EXAMPLE: “Ms. Smith: I’m going to ask the prosecutor some questions first, then I’ll ask your lawyer some questions. After that, you’ll have a chance to ask questions of me or your attorney before I make my decision.”

**□ Explain the court process and how decisions are made**

The purpose of each appearance should be explained in plain language. The defendant should be informed if and when she will have an opportunity to speak and ask questions. Judges and attorneys should demonstrate neutrality by explaining in plain language what factors will be considered before a decision is made.

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**❑ Use plain language**

Minimize legal jargon or acronyms so that defendants can follow the conversation. If necessary, explain legal jargon in plain language. Litigants should be asked to describe in their own words what they understood so any necessary clarifications can be made.

**❑ Make eye contact**

Eye contact from an authority figure is perceived as a sign of respect. Try to make eye contact when speaking and listening. Consider other body language that might demonstrate that you are listening and engaged. Be conscious of court users' body language, too, looking for signs of nervousness or frustration. Be aware that court users who avoid making eye contact with you may be from a culture where eye contact with authority figures is perceived to be disrespectful.

**❑ Ask open-ended questions**

Find opportunities to invite the defendant to tell his/her side of the story, whether directly or via defense counsel. Use open-ended questions to invite more than a simple "yes" or "no" response. Judges should warn litigants that they may need to interrupt them to keep the court proceeding moving forward.

EXAMPLE: "Mr. Smith: I've explained what is expected of you, but it's important to me that you understand. What questions do you have?"

**❑ Explain sidebars**

Sidebars are an example of a court procedure that can seem alienating to litigants. Before lawyers approach the bench, judges should explain that sidebars are brief discussions that do not go on the record, and encourage lawyers to summarize the conversation for their clients afterward.

**❑ Stay on task**

Judges should avoid reading or completing paperwork while a case is being heard. If they do need to divert their attention, they should think about explaining this to the defendant and the audience. In general, judges should take

occasional short breaks to keep themselves focused.

**❑ Personalize scripted language**

Scripts can be helpful to outline key points and help convey required information efficiently. Wherever possible, scripts should be personalized – reading verbatim can minimize the intended importance of the message. Judges should consider asking defendants to paraphrase what they understood the scripted language to mean to ensure the proper meaning was conveyed.

EXAMPLE: "Ms. Smith: I'm going to read you the three things I must consider at sentencing. It's important to me that you understand these factors. After I finish, I'm going to ask you to summarize those three things in your own words."

EXAMPLE: "I am going to take notes on my computer while you're talking. I will be listening to you as I type."

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**TIPS FOR CERTAIN TYPES OF PROCEEDINGS**

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Certain types of criminal proceedings may present unique obstacles to enhancing procedural fairness. Judges should consider the following:

**Bail hearings**

- ❑ Ask defendants to repeat back their understanding of any orders of protection. The order should be provided in clear, plain language and typed in a large font.
- ❑ Explain immediate next steps related to probation intake or pre-trial release mandates. Consider having staff or volunteers direct defendants to the intake or compliance office.
- ❑ Ensure that instructions for a defendant's next court appearance are given clearly – both orally and in writing.
- ❑ Call and/or send written reminders of subsequent court dates. Research shows that court date reminders using procedurally just language (e.g., respectful tone, clear expectations) are more

effective than those that only emphasize the consequences of failure to appear.

### Plea hearings

- ❑ Consider ways to give voice to defendants, either directly or via their attorneys, during plea allocutions and/or sentencing hearings.
- ❑ Go beyond rote plea colloquy questions to ensure true understanding. Consider asking defendants to repeat back their understanding of what rights they are surrendering by pleading guilty.
- ❑ EXAMPLE: “It’s important to me that you understand your rights. For this reason, can you tell me whether you take any medications to clear your mind?”
- ❑ If a defendant seems unsure about their desire to plead guilty, offer a short recess so they can discuss with counsel and reflect on the terms of the plea. Also, consider having a clear, planned response for a defendant who wants to take a plea but also asserts that they are not guilty.
- ❑ If defendants must disclose any mental illness/medications to ensure they are of sound mind when making a plea decision, this should be clearly explained. Whenever possible, ask questions privately.

### Sentencing

- ❑ Explain what factors will (and will not) be considered during sentencing, making it clear that while the defense attorney and prosecutors will have their say, their recommendations will not necessarily be followed.
- ❑ Describe the benefits of compliance and the consequences of non-compliance when outlining a sentence. Ask defendants to repeat back what is expected of them. Convey to defendants and to the audience that it is in everyone’s best interest if the defendant is able to successfully complete his sentence.
- ❑ Provide a written summary of sentencing requirements in plain language. If the sentence includes probation or other community-based referral, briefly explain the intake process and what to expect going forward.
- ❑ Demonstrate interest in the defendant getting the help she needs to avoid future offending. Direct defendants to voluntary service providers or referrals that may be able to support them in

getting their lives on track.

## ADDRESSING SPECIAL POPULATIONS

- ❑ In-custody defendants
  - Be aware of holding area conditions and acknowledge the effects of detention on defendants (e.g. hunger, fatigue).
  - Consider opportunities for defendants to acknowledge and/or interact with family members in the audience; if not possible, explain why contact with family members will not be allowed.
- ❑ Court users with limited English proficiency
  - Focus on respectful and non-intimidating body language with limited English proficiency court users.
  - Work to ensure that interpretation services are provided when needed.
- ❑ Defendants with social service needs
  - Make connections with local service providers. Invite reputable providers to make presentations to judicial and other court staff during lunch meetings or other trainings.
  - When appropriate, refer court users to additional services on a voluntary basis. Making voluntary referrals can be a way to show helpfulness, even if court users opt not to avail themselves of those services.
- ❑ Other challenging populations
  - Anticipate challenging or stressful populations – such as distraught family members or individuals with behavioral disturbances – by preparing scripts or other plans to respond appropriately.



1. See, e.g., Tyler, T.R. 1990. *Why People Obey the Law*. Yale University Press New Haven: London; Frazer, M.S. 2006. *The Impact of the Community Court Model on Defendant Perceptions of Fairness: A Case Study at the Red Hook Community Justice Center*. New York, NY: Center for Court Innovation; Papachristos, Andrew V., Tracey Meares, and Jeffrey Fagan. 2007. “Attention Felons: Evaluating Project Safe Neighborhoods in Chicago,” *Journal of Empirical Legal Studies*.

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# RESOLUTION OF THE TEXAS MUNICIPAL COURTS ASSOCIATION BOARD OF DIRECTORS

## Resolution In Support of Texas Municipal Court Leadership to Promote Procedural Fairness

WHEREAS, a fundamental role of courts is to ensure fair processes and just outcomes for defendants; and

WHEREAS, the constitutional guarantee of due process is designed to ensure that court decisions are made through legally fair procedures; and

WHEREAS, research demonstrates that in addition to providing legal due process, it is important also to meet the public's expectations regarding the process in order to increase positive public perceptions of the court system, reduce recidivism, and increase compliance with court orders; and

WHEREAS, a number of state courts have incorporated the key components of procedural fairness—voice (allowing defendants to be heard), neutrality (making decisions based on neutral, transparent principles), respectful treatment, and trust (the perception that the judge is sincere and caring)—into their judicial education programs, court performance measures, and public outreach information to focus attention on the importance of fair procedures; and

WHEREAS, resources have been developed and educational opportunities have been offered by the Texas Municipal Courts Education Center, the American Judges Academy, and the National Center for State Courts to help the courts in addressing procedural fairness and incorporating such concepts into better decision-making; and

WHEREAS, embracing procedural fairness principles furthers judicial accountability associated with defendants' perceptions of fair treatment, without reference to the merits of individual cases;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Texas Municipal Courts Association encourages all levels of the judiciary to take a leadership role in promoting the use of procedural fairness principles in their court systems; and

BE IT FURTHER RESOLVED that the Board of Directors of the Texas Municipal Courts Association encourages all members of the judiciary to consider implementing the following strategies in their courts to promote procedural fairness:

- (1) Measure defendant perception based on, among other factors, procedural fairness;
- (2) Include the topics of procedural fairness and effective decision-making processes when planning in-house training for judges and court staff;
- (3) Identify opportunities for judges to obtain honest feedback and mentoring to build self-awareness and continue to develop as leaders in their courtrooms;
- (4) Practice procedural fairness in the treatment of court users;
- (5) Champion procedural fairness principles in messages to and interactions with the public, the media, and other branches of government; and
- (6) Hold judges and court staff accountable for operating courts in which everyone is treated with respect, has the opportunity to be heard, and receives an adequate explanation of court orders.

PASSED AND APPROVED ON THIS THE 7th DAY OF February, 2017.

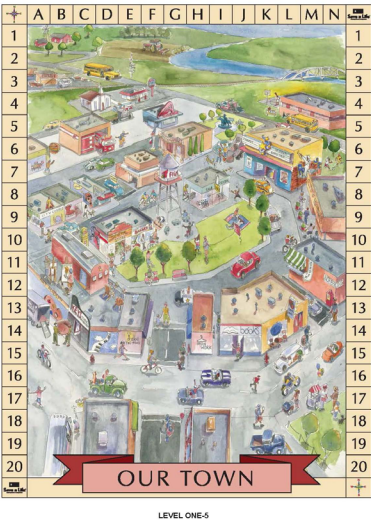
Acknowledgement: Adapted from model resolution of the Conference of Chief Judges and the Conference of State Court Administrators' Access, Fairness and Public Trust Committee.



## Driving on the Right Side of the Road

The goal of TMCEC’s program Driving on the Right Side of the Road (DRSR), funded by the Texas Department of Transportation (TxDOT), is to have every school aged child in Texas be exposed to lessons in staying safe on or near the road. DRSR’s mission is to save lives. The data provided by TxDOT, the National Highway Traffic Safety Association (NHTSA), and other organizations dedicated to traffic safety is not comforting. Motor vehicle crashes are the number one cause of unintentional death among children ages 1 to 19 (CDC, 2016). In 2015, 24 children, ranging in age from five days to four years, died from heatstroke or suspected heatstroke while left in cars (Null J. Pediatric Vehicular Heatstroke Factsheet, 2016). Mile for mile, teens ages 16 to 19 are three times more likely to be involved in a fatal crash compared to other drivers (CDC, 2016). Also in 2015, 456 child pedestrians died as a result of motor vehicles collisions, and most of these fatalities were teens (NHTSA 2016 and CDC 2016). This outreach can be simple, such as having materials in lobbies of courthouses, or it can be more comprehensive, such as visits to schools or school field trips to the courthouse. DRSR is committed to bringing these numbers down by urging Texas municipal courts to bring traffic safety education to their communities.

DRSR can provide materials for courts that seek to pilot or enhance an existing outreach program. DRSR carries an array of coloring books, story books, and other educational materials that courts can offer in a colorful display in their lobby. All of these materials are free of charge to courts. The DRSR “Our Town” map is a colorful drawing depicting an imaginary town where the population displays good traffic safety behavior and unsafe traffic safety behavior. This map can be posted in the lobby so that children visiting the court can identify safe and unsafe behaviors for themselves. Story books can be placed at child level on a lobby table. Court employees can hand children TxDOT seat belt coloring books. By having these materials available to children who may accompany their parents to court, court personnel may have a “teachable moment” where a child might ask a question about something on the map, a story, or wonder at why seat belts are so important. By reaching out just for a moment, that court may be saving a life.

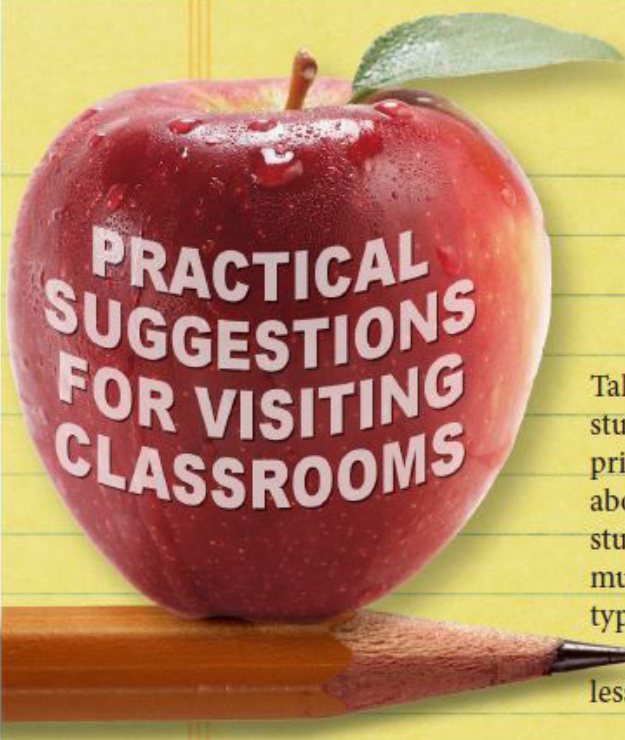


Another more involved outreach strategy might be having an exhibit at your community’s National Night Out event (October 3, 2017 in Texas), Municipal Court Week (November 6-10, 2017 and November 5-9, 2018), a school safety fair, or other special events. DRSR and TMCEC’s other traffic safety grant, Municipal Traffic Safety Initiatives (MTSI), can provide free books for children attending the event or walk courts through having a booth that actively teaches traffic safety by using a bean bag toss and impairment simulation goggles. Having traffic safety materials at these

types of events puts a face on your municipal court, showing that the court is about more than a source only of tickets and punishment. The court is committed to helping provide a safe community for all.

Investing the time to present a safety lesson at your local school or community center for children and teens is perhaps the more difficult of outreach efforts, but it is also the most rewarding. DRSR curriculum and story books are designed to be used at schools, so a presentation about safety may be as easy as reading one of DRSR's monkey books to a class of students with a subsequent question and answer period. DRSR can also provide a court with a class set of "Our Town" maps so that the presenter can ask the students to find all the safe and unsafe behaviors and then discuss why these safe behaviors are important. For classroom presentations, DRSR curriculum covers important Texas TEKS (Texas Essential Knowledge and Skills), the standards which outline what students are to learn in each course or grade. If presenting to a public school, be sure to share these TEKS with the teacher of the class. Again, if you have questions or concerns about how to present to a class or a group of children or teens, please call or email [512.252.3718 or [elizabeth@tmcec.com](mailto:elizabeth@tmcec.com)] DRSR. Our job is to make these presentations as easy as possible for you and your court personnel.

Perhaps the most difficult part of teaching traffic safety at municipal courts is that courts will typically never hear about the lives they save. It might be a child remembering to hold their parent's hand when crossing the street, asking for a bike helmet with a new bike, or even reminding their parents to buckle them into their safety seats. It might be a new driver remembering to turn off their cell phone when behind the wheel, or refusing to get in a car with a driver who seems impaired. These lifesaving decisions don't make the evening news. Lives are saved through this outreach. DRSR thanks the courts who are already out there saving lives and encourages those who haven't taken that step yet to explore how DRSR can help your court get started. Saving lives is always worth the effort.



## Community Outreach Traffic Safety

✓ **Before Your Visit:**

Talk with the teacher. Discuss the ages and experience of the students. Request that the teacher have name tags or name tents printed with students' first names. Consult with the teacher about what additional background materials might help the students. Have they been studying a particular unit that involves municipal court such as traffic safety? Or is this a Career Day type program? Ask if you will have a computer and projector available—check the DRSR website for sample lessons and presentations ([www.drsr.info](http://www.drsr.info)).

# DRSR MONKEY BOOK UPDATE!

The DRSR program has created a series of children’s books on traffic safety. These soft cover books are available free of charge (including free shipping) to Texas municipal courts and local schools. DRSR, through its generous TxDOT grant, can also provide these books to community groups and schools. These books can be accessed on the website as PowerPoints (<http://www.tncec.com/drsr/educators/childrens-books/>) with audio files allowing students to listen to the stories as they read along in the book.

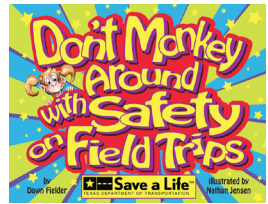


## ***Don't Monkey Around with Safety on Your Bicycle***

Marigold learns the rules and responsibilities that come with her new birthday bike. The book is supported by a bike safety poster. Spanish version: *No juegues con la seguridad al pasear en bicicleta.*

## ***Don't Monkey Around with Safety On Field Trips***

Marigold learns about traffic safety when her class goes on a field trip to a local museum. Students in the story are asked to sign a contract for safe behavior. Spanish version: *No juegues con la seguridad durante paseos escolares.*

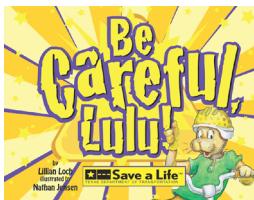
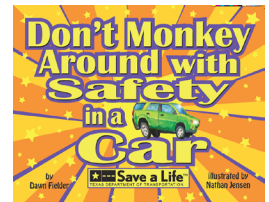


## ***Safe-T-Squad***

Students form a club when they realize there is a lot of unsafe behavior on campus. They become so aware of safe and unsafe behavior at their school that at the end they realize that even adults need reminders. Spanish version: *El escuadrón de seguridad.*

## ***Don't Monkey Around with Safety in a Car***

Marigold learns about not distracting her parents as they drive as well as not driving under the influence of alcohol. Spanish version: *No juegues con la seguridad en un carro.*

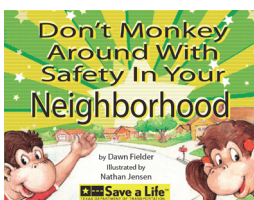


## ***Be Careful, Lulu!***

Lulu’s uncle explains to her to be careful, especially in cars, when bicycling, and when skateboarding. Spanish version: *Ten cuidado, Lulú!*

## ***Safe Not Sorry (sticker book)***

The characters in this book learn valuable safety rules concerning riding in cars, riding in school buses, riding bicycles, walking, and playing in the neighborhood. Students may place “yes” or “no” stickers on safe or unsafe practices throughout the book. Other various traffic safety stickers included. Spanish version: *Actúa seguro sin arrepentirse.*



## ***Don't Monkey Around with Safety in Your Neighborhood***

Marigold and her brother Milton have a fun day playing in their neighborhood while following the rules of safety taught by their parents. Spanish version: *No juegues con la seguridad en tu comunidad.*



**Coloring Books:** DRSR also provides two different traffic safety coloring books.

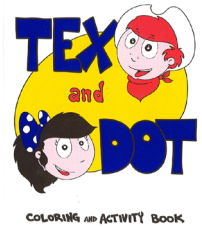


***Buckle Up, Texas!***

This interactive coloring book, published by TxDOT, reviews the importance of child safety seats. This publication is in English and Spanish. The Spanish version is on the reverse side of English version: **Abróchate el cinturón, Texas!**

***Tex and Dot Coloring and Activity Book***

Tex, Dot, and their dog Buckles want to talk to your child about traffic safety. Important information for young children about all types of traffic safety issues is addressed. This TxDOT created publication is only available in English.



All of these publications are available free of charge to your court, for student field trips to your court, or public events such as National Night Out (October 3, 2017) or Municipal Court Week (November 6-10, 2017). Order forms are available on the DRSR website (<http://www.tmcec.com/drsrc/materials-request-forms/drsrc/>) or courts can contact Liz De La Garza at 512.340.8274 or [elizabeth@tmcec.com](mailto:elizabeth@tmcec.com) for more information. DRSR’s mandate is to help your court help its community. Let us help you reach out to save lives!

The graphic is set against a yellow background with horizontal lines, resembling a notepad. On the left, there is a green checkmark followed by the bold text "Community Outreach". Below this, a paragraph of text describes the program. On the right, a blue sticky note is pinned with a metal paperclip. The note contains the handwritten text: "\* Note to Judges &amp; Clerks about public outreach". The background image shows a woman with long brown hair, wearing a white shirt and a dark vest, smiling and looking towards the camera. She is sitting at a desk in what appears to be a classroom or office setting. Other people are visible in the background, including a man in a suit and another person sitting at a desk.

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# FROM THE CENTER

## NEW TMCEC RESOURCES ON FINES, FEES, & COSTS

### Audio Recordings:

These were recorded from the TMCEC regional judges and clerks conference, February 2017, Houston, Texas. To access, go to <http://tmcec.com/course-m/judges/fy17-regional-judges/houston-february-26-28-2017/> and <http://tmcec.com/course-m/clerks/fy17-regional-clerks/houston-february-26-28-2017/>. Course materials may be accessed on the same web page. Annually, TMCEC records one regional conference, so that participants can listen to those breakout sessions that they were unable to attend or refresh themselves on any courses offered.

- *Focus: Fines, Fees, and Costs*, Robby Chapman and Mark Goodner, TMCEC (judges and clerks)
- *The State of Municipal Courts: Current Issues and Recent Changes*, Judge Stewart Milner, Arlington (judges)
- *Ethics: Procedural Fairness, Perception, and Public Confidence*, Jackie Habersham, State Commission on Judicial Conduct (judges)
- *Capias Pro Fine: Dos and Don'ts*, Ryan Turner, TMCEC (judges)
- *Questions Answered*, Mark Goodner, Robby Chapman, Tracie Glaeser, TMCEC (judges)
- *Toward the Goal of Justice: Procedural Fairness and Public Confidence*, Pat Riffel, Friendswood (clerks)
- *Exploring Attitudes, Stereotypes, and Biases*, Leah Huff, Southlake (clerks)
- *Indigence in a Box: Charts, Checklists, and Forms*, Leah Huff, Southlake (clerks)
- *Community Service*, Tracie Glaeser, TMCEC (judges and clerks)
- *Language and the Law*, Robby Chapman, TMCEC (judges and clerks)
- *Beyond Lessons Learned: Addressing Change in Municipal Court*, Victoria Medley, Amarillo (clerks)
- *Endnotes: Takeaways for 2017*, Mark Goodner & Tracie Glaeser, TMCEC (judges)

Note: Audio files of all 16-hours of the program are located on the website. Only those related to fines, fees & costs are listed here – the rest of the regional program is also available on the TMCEC website.

### Video Series:

TMCEC has developed six short video segments that explain issues related to the inability to pay. These 10-15 minute videos are accessible via the TMCEC home page and are located on the TMCEC Online Learning Center.

- *Bearden and Show-Cause Hearings* - Ryan Turner, General Counsel and Director of Education of TMCEC, discusses *Bearden v. Georgia*, whether municipal courts in Texas may order a defendant to remain incarcerated for failure to pay court ordered fines and court costs, and show-cause hearings. 15:47 min.
- *Tate and Inability to Pay* - Ed Spillane, Presiding Judge in College Station, discusses *Tate v. Short*, the necessity of courts to determine whether a defendant is indigent, and the application of alternative means. 13:31 min.
- *Class C Misdemeanors and the Importance of Commitment Orders* - Robin Ramsay, Presiding Judge in Denton, discusses the requirement and application of commitment orders and the difference between a capias pro fine and a commitment order. 11:52 min.
- *Check Your Practice: Indigence* - Stewart Milner, Presiding Judge in Arlington, discusses the assessment and implementation of changes within the Arlington Municipal Court following the events that occurred in Ferguson, Missouri. 7:27 min.
- *Compliance & Enforcement Tools* - Michael Acuna, Judge in Dallas, discusses the three levels of enforcement tools and how to apply such tools to maintain the dignity and decorum of the court. 9:42 min.
- *Case Files & Documentations* - Hilda Cuthbertson, Judge in Snook, outlines the contents and importance of organization within a case file. 9:56 min.

### Bench Card:

The new TMCEC Bench Card briefly outlines Texas laws and recommendations of imposing fines, fees, and costs; guidelines when enforcing fines by incarceration when appropriate; permissible and impermissible court actions

for non-payment, indigence determinations; deferred disposition; setting bail; and the right to counsel. It includes citations to state statutes and court cases. See page 28 of this issue of *The Recorder*.

## Impaired Driving Symposium:

TMCEC, in partnership with the Texas Association of Counties, Texas Center for the Judiciary, and Texas Justice Court Training Center, will offer an Impaired Driving Symposium for judges with funding from the Texas Court of Criminal Appeals and the Texas Department of Transportation.

This symposium is only for judges and will count for eight hours of judicial education credit as well as CLE credit. This joint program brings together judges of all levels to discuss impaired driving issues. Most importantly, this conference provides an opportunity to discuss these issues with fellow judges in order to better understand roles and responsibilities when dealing with an impaired driving case.

The symposium will be held at the Hyatt Regency Lost Pines Resort in Cedar Creek (outside of Austin) on July 24-25, 2017. The deadline to register is July 1, 2017. Email [tmcec@tmcec.com](mailto:tmcec@tmcec.com) for a registration form. A limited amount of travel funds are available to reimburse participants.

### Reminders:

Shown below are the remaining webinars planned by TMCEC 2017 Spring Webinar Series in the upcoming months. Go to <http://online.tmcec.com> and click on upcoming webinars or visit the webinar page at [www.tmcec.com/webinars](http://www.tmcec.com/webinars).

May 4: Texas Department of Public Safety Update

May 18: Conducting Marriage Ceremonies

June 1: Breath and Blood Tests in the Wake of *Birchfield v. North Dakota*

June 15: Impaired Driving Update

There are still spaces in the following programs:

- Bailiffs & Warrant Officers Conference, May 15 - 17, 2017 (Huntsville)
- Regional Judges & Clerks Seminar, June 5 - 7, 2017 (Odessa)
- Prosecutors Annual Conference, June 26 - 28, 2017 (Addison)
- Juvenile Case Managers Conference, June 11 - 13, 2017 (Austin)
- Impaired Driving Symposium, July 24 - 25, 2017 (Cedar Creek)

Please remind your bailiffs, juvenile case managers, warrant officers, marshals, and prosecutors to register ASAP.

Registering online saves time and money for all of us: <https://register.tmcec.com/web/online>.

Judges are reminded to complete their mandatory judicial education requirements of 16 hours by midnight on August 31, 2017. To view your transcript, go to <https://register.tmcec.com/web/online>. Please remember to submit to TMCEC the affirmation of what courses you completed by August 31, 2017.





**IMPOSING FINES, FEES, & COURT COSTS**

- Consider the full fine range for the offense. Make meaningful use of the fine range because after a judgment is final, there is no statutory authorization or mechanism to change the fine amount.
- The judge may direct the defendant to pay (1) the entire fine and costs when sentence is pronounced, (2) the entire fine and costs at some later date, or (3) a specified portion of the fine and costs at designated intervals.<sup>1</sup>
- The court may consider the financial resources and obligations of the defendant, the burden payment of a fine will impose, and ability of the defendant to pay.
- If the judge determines that the defendant is unable to immediately pay the fine and costs, the judge shall allow the defendant to pay the fine and costs in specified portions at designated intervals.<sup>2</sup>
- A judge may require a defendant who is determined by the court to have insufficient resources or income to pay a fine or costs to discharge all or part of the fine or costs by performing community service.<sup>3</sup>
- Applicable fees and other costs in criminal cases and credits shall be assessed upon conviction.<sup>4</sup>

**ENFORCING FINES BY COMMITMENT TO JAIL**

- An indigent defendant shall not be incarcerated solely for inability to pay a fine, court costs, or restitution.<sup>5</sup>
- A *capias pro fine* is not a commitment order.
- Commitment for nonpayment may only be ordered after the judge at a hearing makes the required written determination under Art. 45.046(a), C.C.P.
- A non-indigent defendant may be committed to jail when he or she defaults in the discharge of the judgment if the person has failed to make a good faith effort to discharge the fine and costs.<sup>6</sup>
- An indigent defendant may be committed to jail when he or she defaults in the discharge of the judgment if he or she has failed to make a good faith effort to discharge the fines and costs through community service and could have done so without experiencing any undue hardship.<sup>7</sup>
- In the event of commitment, the length of incarceration to satisfy the fine and costs is specified by the convicting court: not less than \$50 for each period (not less than eight or more than 24 hours) of time served.<sup>8</sup>
- A defendant who is jailed solely because of inability to pay or who has been in jail a sufficient length of time shall be released on habeas corpus.<sup>9</sup>

**COURT ACTIONS ON NON-PAYMENT**

PERMISSIBLE ACTIONS

- Show Cause Hearing
- Payment Plan or Extension of Time to Pay
- Community Service<sup>10</sup>
- Waiver of Fines and Costs if Alternative Means Would Impose an Undue Hardship<sup>11</sup>
- *Capias Pro Fine* and Commitment Hearing
- Suspension of Driver's License<sup>12</sup>
- Refusal to Register a Motor Vehicle<sup>13</sup>
- Collection Services<sup>14</sup>
- Execution Against Property in Same Manner as in a Civil Suit<sup>15</sup>

IMPERMISSIBLE ACTIONS

- Holding a Defendant in Jail Pursuant to a *Capias Pro Fine* Beyond the Business Day Following the Date of the Arrest Without the Commitment Requirements in Art. 45.046, C.C.P.
- Commitment to Jail Without Providing an Opportunity for Community Service or Without a Commitment Hearing and Written Determination under Art. 45.046, C.C.P.
- Requiring a Bond to See the Judge
- Refusal to Accept Filings
- Altering a Final Judgment (unless by a *nunc pro tunc* order for a clerical error)

**DETERMINING INDIGENCE**

- For fine-only offenses, there is no statutory means test for determining indigence. Judges have discretion in determining whether a defendant is indigent.<sup>16</sup>
- Judges may use the Federal Poverty Guidelines or the Living Wage Calculator as guidance for an indigence determination.<sup>17</sup>
- To determine indigence, a court may require a defendant under oath to provide income and asset information.<sup>18</sup>
- When a defendant does not pay all the fine and costs at the time of sentencing, it is important for courts to communicate and document its expectation to the defendant and what the defendant should do if he or she is unable to pay in the manner ordered by the judge.<sup>19</sup>

## DEFERRED DISPOSITION (Art. 45.051, C.C.P.)

- An order of deferral provides a judge great discretion and flexibility, especially in indigence cases, far greater discretion than post-final judgment.
- In lieu of immediate payment of all court costs, a judge may allow the defendant to (among other things) pay the costs in installments during the deferral period, to complete community service, to do a combination of installments and community service, submit to counseling, psychological testing, or substance abuse treatment, and/or comply with any other reasonable condition.
- If the defendant fails to comply with the imposed requirements, the judge may lower the fine. Such an authorization does not exist after final judgment.
- The procedural safeguard of a show cause hearing is built into deferred disposition (and DSC<sup>20</sup>).

## BAIL

- As a general rule in Texas, bail may not be denied.<sup>21</sup>
- It is well established in Texas case law that ability or inability to make bail does not, alone, control in determining the amount; however, it is an element to be considered along with the others named in Art. 17.15, C.C.P.<sup>22</sup>

- While bail should be sufficiently high to give reasonable assurance that the defendant will appear, the power to require bail is not to be used as an instrument of oppression.<sup>23</sup>
- A defendant charged with a Class C misdemeanor who is in jail must be released on personal bond or reduction of bail amount if the State is not ready for trial within 5 days of commencement of detention.<sup>24</sup>

## RIGHT TO COUNSEL

- A defendant accused of a Class C misdemeanor has the right to be represented by counsel in an adversarial judicial proceeding.<sup>25</sup>
- The right to be represented by counsel includes the right to consult with counsel in private sufficiently in advance of a proceeding to allow adequate preparation for the proceeding.<sup>26</sup>
- Defendants do not have a right to appointed counsel in Class C misdemeanor cases because in such cases the sentence is payment of the fine and costs, not imprisonment.<sup>27</sup>
- Municipal judges are not authorized under Art. 26.04, C.C.P., and have no duty to appoint counsel for indigent defendants.<sup>28</sup> Municipal judges are, however, authorized under Art. 1.051(c), C.C.P., to appoint counsel for an indigent defendant if the court concludes that the interests of justice require representation.

## ENDNOTES

1. Article 45.041(b), Code of Criminal Procedure.
2. Article 45.041(b-2), Code of Criminal Procedure.
3. Article 45.049(a), Code of Criminal Procedure.
4. See, Court Costs Chart, <http://tmcec.com/resources/charts/>. If a cost is not expressly provided by law, it may not be imposed. Article 103.002, Code of Criminal Procedure. The judge shall give jail credit as provided by Article 42.03 of the Code of Criminal Procedure at the rate provided in Article 45.048. Article 45.041(c), Code of Criminal Procedure. A Time Payment Fee shall be assessed if any part of the fine, court costs, fees, or restitution is paid on or after the 31st day after the date on which the judgment was entered. Sec. 133.103, Local Government Code; See also, Article 42.037(g)(1), Code of Criminal Procedure for optional restitution fee.
5. *Tate v. Short*, 401 U.S. 395 (1971); *Gipson v. State*, 383 S.W.3d (Tex. Crim. App. 2012) (citing *Bearden v. Georgia*, 460 U.S. 660 (1983)).
6. Article 45.046(a), Code of Criminal Procedure.
7. *Id.* Independent of Texas law, *Bearden* prescribes a mandatory judicial directive to make inquiry into the reason for failure to pay and permits jail when alternative means are inadequate for punishment and deterrence. *Gipson v. State*, 428 S.W.3d 107, 110 (Tex. Crim. App. 2014).
8. Article 45.048, Code of Criminal Procedure.
9. *Id.*
10. Article 45.049, Code of Criminal Procedure.
11. Article 45.0491, Code of Criminal Procedure.
12. Section 706.002, Transportation Code.
13. Section 702.003, Transportation Code.
14. Article 103.0031, Code of Criminal Procedure.
15. Article 45.047, Code of Criminal Procedure.
16. See, e.g., Articles 45.041, 45.046, and 45.049, Code of Criminal Procedure.
17. Dr. Amy K. Glasmeier and the Massachusetts Institute of Technology, Living Wage Calculator, <http://livingwage.mit.edu/>.
18. See, example, *Application for Time Payment, Extension, or Community Service*, 2015 TMCEC Forms Book.
19. See, example, *Admonishment as to Financial Changes*, 2015 TMCEC Forms Book.
20. Article 45.0511, Code of Criminal Procedure.
21. Article I, Section 11, Texas Constitution; *Ex parte Canada*, 754 S.W.2d 660, 666-67 (Tex. Crim. App. 1988).
22. *Ex parte Bufkin*, 553 S.W.2d 116, 118 (Tex. Crim. App. 1977).
23. *Id.*; Article 17.15(1) and (2), Code of Criminal Procedure.
24. Article 17.151, Code of Criminal Procedure.
25. Article 1.051(a), Code of Criminal Procedure.
26. *Id.*
27. Article 45.041(a), Code of Criminal Procedure; Article 1.051(c), Code of Criminal Procedure; *Scott v. Illinois*, 440 U.S. 367 (1979); *Fortner v. State*, 764 S.W.2d 934 (Tex. App.—Fort Worth 1989, no pet.) (citing *Empy v. State*, 571 S.W.2d 526, 528 (Tex. Crim. App. 1978)); See also, *Bush v. State*, 80 S.W.3d 199 (Tex. App.—Waco 2002, no pet.).
28. *Barcroft v. State*, 881 S.W.2d 838 (Tex. App.—Tyler 1994, no pet.).



## Legislative Update Registration Form

- If you need lodging, you will have to make your own reservation and cover the cost with the hotel, mention TMCEC for a discount.
- Breakfast and Lunch will be provided.
- Up to six hours credit can be received for CLE with an additional payment of \$50. (No TCOLE Credit)
- Please check the program you would like to attend and return completed form with the registration fee to TMCEC.

LUBBOCK                       HOUSTON

August 4, 2017                      August 8, 2017  
Overton Hotel                      Omni Westside  
806.776.7000                      281.558.8338

DALLAS                               AUSTIN

August 15, 2017                      August 18, 2017  
Omni Park West                      Omni Southpark  
972.869.4300                      512.448.2222

Course lasts from 9:00 a.m. to 5:00 p.m.

**REGISTRATION FORM:**                       LUBBOCK                       HOUSTON                       DALLAS                       AUSTIN

Name *(please print legibly)*: \_\_\_\_\_

Street: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Office Telephone #: \_\_\_\_\_ Court #: \_\_\_\_\_ Fax: \_\_\_\_\_

Primary City Served: \_\_\_\_\_ Other Cities Served: \_\_\_\_\_

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

**Check all that apply:**

- Full Time     Part Time     Attorney\*     Non-Attorney     Prosecutor     Other (\$150): \_\_\_\_\_
- Presiding Judge     Associate/Alternate Judge     Deputy Court Clerk    \_\_\_\_\_
- Court Administrator     Court Clerk     Mayor & Council (\$150)\*

\* Please add \$50 if requesting CLE credit.

*I understand that I will be responsible for making and paying for my own hotel reservation. Payment is required for this program; payment is due with this form. The registration fee is refundable if the Center is notified of cancellation in writing 10 working days prior to the seminar.*

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

**PAYMENT INFORMATION:**

- \$100 Check for Registration Fee Enclosed                      \* \$50 Check for CLE Fee Enclosed
- For participants who do not work in a municipal court:**
- \$150 Check for Registration Fee Enclosed                      \* \$50 Check for CLE Fee Enclosed

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

Credit Card type:

Credit Card Number                      Expiration Date                      Verification Number *(found on back of card)*

MasterCard    \_\_\_\_\_

Visa    Name as it appears on card *(print clearly)*: \_\_\_\_\_

Total Amount:

\$ \_\_\_\_\_ Authorized Signature \_\_\_\_\_

Receipts are automatically sent to registrant upon payment. To have an additional receipt emailed to your finance department list email address here:

\_\_\_\_\_

Please return completed form with payment to TMCEC at 2210 Hancock Drive, Austin, TX 78756. Fax registration forms with credit card information to 512.435.6118.

**TEXAS MUNICIPAL COURTS EDUCATION CENTER  
FY17 REGISTRATION FORM:**

**Regional Judges & Clerks Seminar, Court Administrators, Bailiffs & Warrant Officers, and Juvenile Case Managers**

Conference Date: \_\_\_\_\_

Conference Site: \_\_\_\_\_

Check one:

Non-Attorney Judge (\$50)  
 Attorney Judge not-seeking CLE credit (\$50)  
 Attorney Judge seeking CLE credit (\$150)  
 Regional Clerks (\$50)

Court Administrators Seminar (\$100)  
 Bailiff/Warrant Officer (\$100)  
 Juvenile Case Manager (\$100)

By choosing TMCEC as your MCLE provider, attorney-judges help TMCA pay for expenses not covered by the Court of Criminal Appeals grant. Your voluntary support is appreciated. The CLE fee will be deposited into the grantee's private fund account to cover expenses unallowable under grant guidelines, such as staff compensation, membership services, and building fund.

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: \_\_\_\_\_ Are you also a mayor?: \_\_\_\_\_

Emergency contact (Please include name and contact number): \_\_\_\_\_

**HOUSING INFORMATION - Note: \$50 a night single room fee**

TMCEC will make all hotel reservations from the information you provide on this form. TMCEC will pay for a **double occupancy room at all regional judges and clerks seminars**. To share with a specific seminar participant, you must indicate that person's name on this form.

I request a private room (\$50 per night : \_\_\_\_ # of nights x \$50 = \$ \_\_\_\_). TMCEC can only guarantee a private room, type of room (queen, king, or 2 double beds\*) is dependent on hotels availability. Special Request: \_\_\_\_\_

I request a room shared with a seminar participant. Room will have 2 double beds. TMCEC will assign roommate **or** you may request roommate by entering seminar participant's name here: \_\_\_\_\_

I do not need a room at the seminar.

**Hotel Arrival Date (this must be filled out in order to reserve a room):** \_\_\_\_\_

\*If you bring a companion with you to stay in the hotel, the hotel reserves the right to charge an additional fee.

Municipal Court of: \_\_\_\_\_ Email Address: \_\_\_\_\_

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

Office Telephone #: \_\_\_\_\_ Court #: \_\_\_\_\_ Fax: \_\_\_\_\_

Primary City Served: \_\_\_\_\_ Other Cities Served: \_\_\_\_\_

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

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

DOB: \_\_\_\_\_ TCOLE PID # \_\_\_\_\_

I have read and accepted the cancelation policy, which is outlined in full on page 10-11 of the Academic Catalog and under the Registration section of the website, www.tmcec.com. **Full payment is due with the registration form. Registration shall be confirmed only upon receipt of the registration form (with all applicable information completed) and full payment of fees.**

\_\_\_\_\_  
Participant Signature (may only be signed by participant)

\_\_\_\_\_  
Date

**PAYMENT INFORMATION:**

**Registration/CLE Fee:** \$ \_\_\_\_\_ + **Housing Fee:** \$ \_\_\_\_\_ = **Amount Enclosed:** \$ \_\_\_\_\_

- Check Enclosed (Make checks payable to TMCEC.)  
 Credit Card

Credit Card Payment:

Amount to Charge: \_\_\_\_\_ Credit Card Number \_\_\_\_\_ Expiration Date \_\_\_\_\_

Credit card type: \$ \_\_\_\_\_

MasterCard

Visa Name as it appears on card (print clearly): \_\_\_\_\_

Authorized signature: \_\_\_\_\_

Receipts are automatically sent to registrant upon payment. To have an additional receipt emailed to your finance department list email address here: \_\_\_\_\_

Please return completed form with payment to TMCEC at 2210 Hancock Drive, Austin, TX 78756, or fax to 512.435.6118.

**TEXAS MUNICIPAL COURTS  
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## Change Service Requested

### TMCEC MISSION STATEMENT

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

## 2016 - 2017 Academic Schedule At-A-Glance

Seminar	Date(s)	City	Venue Information
Bailiffs and Warrant Officers Seminar	May 15-17, 2017 (M-T-W)	Huntsville	Veterans Conference Center 455 SH 75N, Huntsville, TX 77320
New Judges & Clerk Orientation	May 17, 2017 (W)	Austin	TMCEC 2210 Hancock Drive, Austin, TX 78756
Regional Judges & Clerks Seminar	June 5-7, 2017 (M-T-W)	Odessa	MCM Elegante 5200 E University Blvd, Odessa, TX 79762
Juvenile Case Managers Seminar	June 11-13, 2017 (S-M-T)	Austin	Omni Southpark Austin 4140 Governors Row, Austin, TX 78744
Prosecutors & Court Administrators Seminar	June 26-28, 2017 (M-T-W)	Addison	Crowne Plaza Dallas Galleria 14315 Midway Road, Addison, TX 75001
Clerks One Day Clinic	June 30, 2017 (F)	Austin	TMCEC 2210 Hancock Drive, Austin, TX 78756
One Day Clinic	July 7, 2017	Austin	TMCEC 2210 Hancock Drive, Austin, TX 78756
New Judges & Clerks Seminar	July 17-21, 2017 (M-T-W-Th-F)	Austin	Omni Southpark Austin 4140 Governors Row, Austin, TX 78744
Impaired Driving Symposium	July 24-25, 2017 (M,T)	Cedar Creek	Hyatt Regency Lost Pines Resort and Spa 575 Hyatt Lost Pines Rd Cedar Creek, TX 78612
Legislative Update	August 4, 2017 (F)	Lubbock	Overton Hotel 2322 Mac Davis Ln. Lubbock, TX 79401
Legislative Update	August 8, 2017 (T)	Houston	Omni Houston Hotel 13210 Katy Freeway, Houston, TX 77079
Legislative Update	August 15, 2017 (T)	Dallas	Omni Dallas Hotel Park West 1590 LBJ Fwy, Dallas, TX 75234
Legislative Update	August 18, 2017 (F)	Austin	Omni Southpark 4140 Governors Row, Austin, TX 78744

Note: There are special registration forms to be used to register for the New Judges and New Clerks Seminars, Prosecutors Conference, and Impaired Driving Symposium. Please visit our website at [www.tmcec.com/registration/](http://www.tmcec.com/registration/) or email [register@tmcec.com](mailto:register@tmcec.com) for a registration form.

**Register Online: [register.tmcec.com](http://register.tmcec.com)**