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THE MICHAEL MORTON ACT AND TEXAS MUNICIPAL COURTS

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In its 83rd Session, the Texas Legislature passed the Michael Morton Act. This bill came after the exoneration of Michael Morton, who wrongfully spent 25 years in prison. Morton’s exoneration received statewide attention, and the Legislature passed the Michael Morton Act. This bill is an attempt to improve the criminal justice system in Texas by reducing the number of wrongful convictions through a more open discovery process.

I. Background

Michael Morton was arrested and charged with murder in 1986 after a neighbor entered the Mortons’ home and found the body of Michael Morton’s wife, Christine. At trial, the prosecutor, Ken Anderson, claimed that Morton had killed his wife in a rage after she rejected him and then staged a robbery inside the home. The theory was based on a letter Michael had left for his wife about the rejection, a videotape Morton had rented the night before depicting a robbery, Morton’s unusual

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E-CIGARETTES: TEXAS CITIES DIPPING THEIR TOES IN THE VAPOR

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The eyes of lawmakers, whether they sit in the U.S. Capitol or the City Council Chambers in Murphy, Texas, are on e-cigarettes, a \$1.7 billion industry in the United States.¹ Such lawmakers are faced with multiple questions: Who should be able to use them? Where should they be used? What are they, exactly?

The last question creates the biggest obstacle to regulation. No standard definition of “e-cigarette” exists—in fact, designs and ingredients vary by manufacturer.² Generally, electronic nicotine delivery systems (“electronic cigarettes” or “e-cigarettes”) resemble traditional cigarettes and heat nicotine into a vapor instead of burning tobacco.³ They consist of a 3-6 inch tube containing a battery and an atomizer cartridge that holds liquid nicotine or other chemicals.⁴

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AROUND THE STATE

CELEBRATING TEXAS MUNICIPAL COURTS WITH A WEEK OF FESTIVITIES

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Municipal Courts Week is an annual tradition in Texas, and this past year it was celebrated with great success across the Lone Star State from November 4-8, 2013. Dozens of cities, large and small, from El Paso and San Antonio to Tahoka and Alvord, hosted events for Municipal Courts Week that showed appreciation for their staffs and reached out to their local communities. Overall, the activities were as diverse as the cities themselves.

The City of Moulton sponsored a traffic safety poster contest for elementary students with the winning posters displayed at the courthouse during Municipal Court Week. In Arlington, the court distributed a wide array of materials to the public, including children's coloring books, waterproof bags for cell phones, flashlight whistles, pens, shoe polish kits, and more. Pearland residents heard a mayoral proclamation and the court staff enjoyed an appreciation luncheon. Cedar Hill displayed a week long exhibit in City Hall and hosted a Municipal Court Matinee video—popcorn included! The City of College Station showed its appreciation to its clerks by giving them a different treat every day of the week, from breakfast tacos to homemade pumpkin cakes.

"In addition to the proclamation, we also had breakfast one day provided by the police department, breakfast another day provided by the judge, and a spaghetti lunch made by the Senior Court Administrator for all," said Judge Kathleen Person, Temple Municipal Court. "I didn't think of this as celebratory but I realize it was now. We decided this year to focus on the contributions of staff."

November 4-8 was officially declared Municipal Courts Week by the 83rd Legislature thanks to the support of sponsors Royce West, a state senator, and Ruth Jones McClendon, a state representative. Senate Concurrent Resolution 21 recognized that "because citizens come into contact with municipal courts more than any other courts, the public impression of the Texas judicial system is largely dependent on their experience there," and resolved to "take special note of the important work performed by all those associated with the state's municipal courts."

"Court Administrator Sherrie Dast, Valerie Daughtry and Linda Claridge greeted and served citizens cake, punch, treats, and giveaways. Some citizens served on a jury trial while others took in the process," said Sherrie Dast, Reno Municipal Court. "A small article in the *Azle News* invited residents to partake in the festivities along with the council passing a proclamation. Staff enjoyed their goody bags and the freebies from TxDOT."

Municipal Courts Week continued on pg. 28

MAKING SENSE OF GA-1035

Attorney General Opines Conflicts Between Recent Juvenile Confidentiality Amendments Are Not Irreconcilable

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On January 2, 2014, the Office of the Attorney General of Texas issued Opinion No. GA-1035. The announcement of the opinion, which has been highly anticipated by courts and juvenile justice practitioners since last summer, is of particular interest to courts with jurisdiction of fine-only misdemeanors involving children. It was issued in response to a request from the Office of Court Administration (OCA) in July 10, 2013 (RQ-1136-GA).

The conflicts between S.B. 393¹/S.B. 394² and H.B. 528³ are detailed in the August 2013 issue of *The Recorder*. The conflict is also featured in the presentation on juvenile records featured in AY 2014 TMCEC Regional Programs.

As a preliminary matter, it is important to note that attorney general opinions do not relieve courts of their duty to construe and reconcile statutes. An attorney general opinion is not a judgment by a court of competent jurisdiction.⁴ As the Court of Criminal Appeals has stated, while attorney general opinions are persuasive, they are not binding on courts.⁵ As one Texas Attorney General explained, an attorney general opinion is highly persuasive only when it coincides with a court's view of the law.⁶

I. Questions Answered

A. Whether H.B. 528 irreconcilably conflicts with S.B. 393 and S.B. 394?

In the opinion of the Attorney General, S.B. 393, S.B. 394 and H.B. 528 do not irreconcilably conflict.

The Attorney General believes that the amendments to Article 44.2811 of the Code of Criminal Procedure by the Senate Bills and House Bill, which govern records relating to children accused of non-traffic fine-only misdemeanors when a case is before a court other than a court governed by Chapter 45 of the Code of Criminal Procedure (i.e., county courts and appellate courts;

not a municipal or justice court), “[t]aken together, establish three separate, independent conditions for confidentiality” Confidentiality attaches when: (1) a child is convicted and has satisfied the judgment; (2) the child receives a dismissal after deferral of disposition; or (3) the case is appealed.⁸

In terms of Article 45.0217 of the Code of Criminal Procedure, applicable to justice and municipal courts, and Section 58.00711 of the Family Code, applicable to juvenile courts and juvenile records, the Attorney General believes that “[t]he conditions of the House Bill include both of the conditions of the Senate Bills.” H.B. 528 states that except as provided by Article 45.0217(b), all information may not be disclosed to the public if the child either (1) is charged, (2) is convicted, (3) is found not guilty, (4) had a charged dismissed, or (5) is granted deferred disposition. S.B. 393 and S.B. 394 state that except as provided by Article 45.0217(b), all information may not be disclosed to the public if the child either (1) is convicted of and has satisfied the judgment or (2) receives a dismissal after a deferral of disposition. The opinion concedes in a footnote that this construction of the two versions of Article 45.0217 and Section 58.0711 arguably make the Senate Bills superfluous (i.e., redundant or unnecessary), but because H.B. 528 had an enactment date four months after S.B. 393 and S.B. 394, it cannot be said that the Senate Bills enacted a meaningless statute because the Senate Bills operated independently during that time.⁹ The opinion states that some records will be required to be withheld under H.B. 528 but not under S.B. 393 and S.B. 394. Which records the Attorney General is referring to are not stated. Presumably, he is referring to cases in which a child is charged, found not guilty, the charge has been dismissed, or deferred disposition is granted. The Attorney General, citing a Supreme Court opinion, states that if in practice this obviates (i.e., removes or precludes) the Senate Bills, the “wisdom or expediency of law is the Legislature’s prerogative.”¹⁰ A violation of a confidentiality statute only occurs when a court discloses a record that the statute requires to be withheld.

B. What is the effective date of each amendment and did the House Bill supplant the Senate Bills?

The Attorney General states, “The Senate Bills became effective on September 1, 2013. Because the Senate Bills and the House Bills do not conflict, they will each be effective on January 1, 2014.”¹¹

C. Whether H.B. 528 constructively requires non-traffic, fine-only misdemeanors cases involving children to be conducted in courtrooms closed to the public and whether dockets in such cases can be publicly posted?

In the Attorney General’s opinion, he first acknowledges the broad scope of the confidentiality statutes, then he notes that H.B. 528 does not make live courtroom proceedings confidential. He then cites Article 1.24 of the Code of Criminal Procedure for the proposition that all proceedings and trials in all courts are public and Article 45.041(d) that in municipal and justice courts all sentences and final orders of the justice or judge shall be rendered in open court.

As to the public posting of dockets, a docket is subject to the confidentiality statutes to the extent that they are a “record” of a “file.” Because neither “record” nor “file” is defined by statute, courts are likely to refer to the plain meaning of these word. A docket can be defined either as a formal record of proceedings or as a schedule of pending case. Accordingly, a formal docket (i.e., the official report of the proceedings in a case, including any filed papers, transcripts or tangible exhibits) is confidential. In contrast, a “schedule docket,” an administrative instrument used to provide general public notice of pending hearings and proceedings is neither a record nor a file subject to the confidentiality statutes.

II. Question Unanswered: Does H.B. 528 violate the constitutional openness of criminal courts in Texas?

In both civil and criminal cases in Texas, there is a presumption that court records and proceedings are open to public scrutiny. The records of children in juvenile court are generally presumed confidential. However, not even juvenile court records are unconditionally confidential. The Family Code features mechanisms, akin to release valves, where even those records presumed confidential, pursuant to a juvenile court order, can be disclosed to “any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.”¹² In contrast, the records of children in criminal courts have historically been treated no differently than any other criminal record. Regardless if a child is accused in criminal district court of first degree felony theft or charged in municipal court with fine-only misdemeanor theft, there is a presumption that

records and proceedings are open to public scrutiny.¹³ Society has a legal interest in such proceedings that can only be ensured by public access.¹⁴ Born from what the Court of Criminal Appeals has called a “right of access” said to be guaranteed by the 1st and 14th Amendments, is a right to publicity in criminal proceedings that does not solely belong to criminal defendants.¹⁵ H.B. 528 unconditionally mandates confidentiality beginning at the moment of charging *with no exceptions*. In contrast to the Family Code and the law governing juvenile courts, municipal and justice courts are provided no leeway to allow for the public inspection of records. H.B. 528 precludes members of the media, researchers, and all other members of the public with a legitimate interest from being able to inspect criminal case records.

The Attorney General received briefing concerning the constitutionality of H.B. 528 but because OCA did not raise the issue in the request for an opinion, the Attorney General chose not to address it in GA-1035.

III. Analysis and Implications

A. What about “conditional confidentiality?”

Although OCA’s request clearly delineated the differences between “expanded conditional confidentiality” and “total confidentiality,” GA-1035 makes no reference to either construct and makes no effort to reconcile how they can co-exist. Readers can reasonably infer, however, that it is the Attorney General’s opinion, that expanded conditional confidentiality (S.B. 393 and S.B. 394) became effective September 1, 2013 and the intent of the Senate Bills was obviated and arguably rendered superfluous when H.B. 528 (total confidentiality) became effective on January 1, 2014. In other words, under the Attorney General’s construction of the law, H.B. 528 enveloped S.B. 393 and S.B. 394. At the same time, however, the Attorney General does not believe H.B. 528 supplants the Senate Bills. Each of the bills remains effective on January 1, 2014.

B. Is H.B. 528 retrospective in application?

The amendments to Articles 44.2811 and 45.0217 of the Code of Criminal Procedure, and Section 58.00711 of the Family Code, contained in H.B. 528, apply to an offense committed before, on, or after January 1, 2014.

C. What are the implications of H.B. 528 on Third-Party Service Providers?

Perhaps there are none. The Attorney General’s rationale for why docket information can be shared publicly and why H.B. 528 does not make live courtroom proceedings confidential, indirectly calls into question the basis that TMCEC and others feared that H.B. 528

could inadvertently hinder the ability of a court to share information with third-party service providers (non-profit teen court providers, community service providers, social service providers, debt collectors, etc. . In both Senate Bills and in H.B. 528, the focus of Article 45.0217 is two-fold: (1) what information may not be disclosed to the public and (2) who may inspect such information. Despite the differences between the Senate Bills and H.B. 528, all three bills sought to prevent members of the public from gleaning information in the possession of courts and law enforcement from records relating to children accused of non-traffic fine-only misdemeanors. None of the bills sought to restrict courts from exercising powers or conveying information to third parties as authorized by other statute. Accordingly, the provisions of H.B. 528 should be construed narrowly and with due deference to other legislative enactments that allow courts to utilize third-party service provider. H.B. 528 is about protecting certain criminal records of children from public access, not stifling the operation of local courts and shutting down non-profit teen court program. Juvenile court records are confidential under Title 3 of the Family Code. Juvenile courts have been authorized under Section 54.032 of the Family Code to refer children to teen court since 1989. No one has questioned the ability of a juvenile court to refer a child to a teen court program because of confidentiality. Why is this? A likely explanation is because confidentiality is about public requests for information from the court and has nothing to do with courts sharing information pursuant to other laws.

Conclusion

The Attorney General believes that H.B. 528 enveloped S.B. 393 and S.B. 394 and that there is no conflict between the laws. In absence of future case law or further statutory revision by the Legislature, Texas will have two different sets of laws on the books regarding the confidentiality of juvenile records accused of certain fine-only misdemeanors. It is up to each municipal judge and justice of the peace to decide whether they share the Attorney General's opinion. Questions about the constitutionality of H.B. 528 remain unanswered. However, GA-1035 can be construed to supports the proposition that laws governing confidentiality of juvenile records from public access are distinct and not incongruent with other laws pertaining to the operation of courts.

¹ See, "Sections 3, 4, and 22: Conditional Confidentiality Extended to Deferral of Disposition for Certain Offenses" p. 27.

² See, "Conditional Confidentiality for Records of Children Receiving Deferred Disposition for Certain Fine-Only Misdemeanors" p. 35.

³ See, "Total Confidentiality for Records of Children Charged with Fine-Only Misdemeanors" p. 21.

⁴ Tex. Atty. Gen. Op. GA-115 (2003) at 2.

⁵ *Ex parte Schroeter*, 958 S.W.2d 811, 812 (Tex. Crim. App. 1997) (citing *Tussey v. State*, 494 S.W.2d 866, 870, n. 3 (Tex. Crim. App. 1973)).

⁶ Tex. Atty. Gen. Op. 0-7234 (1946).

⁷ Tex. Atty. Gen. Op. GA-1035 (2014) at 2.

⁸ *Id.*

⁹ *Id.* at 3 n. 7.

¹⁰ *Id.*

¹¹ *Id.* at 3.

¹² Secs. 58.005(a)(7), 58.007(b)(5), Family Code.

¹³ Tex. Atty. Gen. Op. GA-0422 (2006). Re: Confidentiality of grand and petit jury lists. This presumption is rooted in the Texas Constitution and reflected in Article 1.24 of the Code of Criminal Procedure. Professor Robert O. Dawson, who is considered the legal architect of the Texas juvenile justice system explained, "Records in [municipal and justice] courts are criminal records even when they pertain to a defendant who is a child. They are not subject to the confidentiality restrictions that apply to juvenile records. However, special expunction provisions are available in such cases." Robert Dawson, *Texas Juvenile Law*, 346 (8th ed. 2008).

¹⁴ In *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980), the Supreme Court held that "a presumption of openness inheres in the very nature of a criminal trial under our system of justice."

¹⁵ *Houston Chronicle Pub. Co. v. Shaver*, 630 S.W.2d 927, 931 (Tex. Crim. App. 1982).



Michael Morton Act continued from pg. 1

behavior after the murder, and evidence on time of death showing Christine had been killed before Morton left for work that morning. Although there were other pieces of evidence pointing towards an unknown suspect, including unidentified fingerprints on the back door of the home and a strange footprint in the backyard, the jury convicted Morton of murder and sentenced him to life in prison.

Years later, it came to Morton's attention that the prosecutor had not produced certain pieces of exculpatory evidence in the State's possession at the time of the trial. Morton's attorneys requested all exculpatory material in the State's possession before trial began in 1987. When the trial judge questioned the prosecutor about the defense's discovery request, Anderson claimed that he had nothing to turn over. But Anderson did have possession of a law enforcement officer's report about a conversation Michael Morton's son, Eric Morton, had with his grandmother. Eric, who was only three years old when his mother was killed, told his grandmother that his father was not at home when his mother was killed. Rather, Eric said that a "monster" had murdered his mother. The State also had a report of a strange man who had parked his green van several times near a wooded lot behind the Mortons' home and was seen wandering around that lot. Morton alleged that Anderson

deliberately failed to disclose these documents to secure a conviction, and that these documents were material to his innocence.

II. Case Law

Under the Supreme Court's decision in *Brady v. Maryland*¹, prosecutors are required to turn over evidence that is favorable to the accused and that is material to either guilt or punishment;¹ but in the Morton case, the prosecutor failed to comply with this discovery rule and the trial judge's order leading to the conviction of an innocent man.

III. Application

After Morton's exoneration, the 83rd Texas Legislature (2013) passed S.B. 1611, the Michael Morton Act, requiring open-file policies in prosecutor's offices. Although S.B. 1611 tries to clarify the requirements of Texas' new open-file policy, it leaves courts with jurisdiction of Class C misdemeanors very little guidance on what they should do in cases with pro se defendants – a common type of defendant in municipal courts.

Under the new law, which amends Article 39.14 of the Code of Criminal Procedure, the State is required to produce or permit the inspection and the electronic duplication, copying, and photographing of specified materials subject to discovery.² The State must do so as soon as practicable after receiving a timely request from the defendant.³ The State is required to turn over the following materials that are in the possession, custody, or control of the State or any person under contract with the State: any offense reports, any designated documents, papers, written or recorded statements of the defendant or a witness including witness statements of law enforcement officers, but not including the work product of counsel for the State in the case and their investigators and their notes or report, or any designated books, accounts, letters, photographs, or objects or other tangible things not otherwise privileged that constitute or contain evidence material to any matter involved in the action.⁴ The State *may* provide the defendant with electronic duplicates of any of the discovery materials.⁵ The defendant does not have any right under Article 39.14 to discovery of written communications between the State and an agent, representative, or employee of the State.⁶ The defendant is not authorized to remove any of the documents, items, or information from the State's possession and any inspection shall be in the presence of a State representative.⁷

If there is any portion of a discovery document that is not subject to discovery, then the State may withhold or redact only that portion.⁸ The defendant may request a hearing to determine whether the withheld portion or

redaction was justified under Article 39.14 or any other law.⁹

The bill provides a different discovery process for pro se defendants. The bill provides that in the case of pro se defendants, if the court orders the State to produce and permit the inspection of a document, item, or information under this subsection, the State shall permit the pro se defendant to inspect and review the document, item, or information, but is not required to allow electronic duplication.¹⁰

Generally, the defendant, the defendant's attorney, or an investigator, expert, consulting legal counsel, or an agent of the defendant's attorney may not disclose to a third party any of the materials or evidence received from the State under Article 39.14 with three exceptions: (1) as provided by Article 39.14(f); (2) if a court orders the disclosure upon a showing of good cause after notice and a hearing considering the security and privacy interests of any victim or witness; or (3) if the documents, evidence, materials, or witness statements have already been publicly disclosed.¹¹

Subsection (f) of the article provides that the defendant's attorney, or an investigator, expert, consulting legal counsel, or agent of the defendant's attorney may allow the defendant, witness, or a prospective witness to view the discovery materials provided under this article; however, the defendant's attorney, his or her agent, or an investigator, expert, or consulting legal counsel may not allow the defendant, witness, or potential witness to have copies of the discovery materials, unless it is a copy of the witness' own statement. Prior to allowing these persons to view any of the discovery materials, the person possessing the information shall redact any identifying personal information or numbers in the documents or witness statements. The defendant may not be the agent of his or her own attorney.¹²

Under the new bill, attorneys can still discuss their case within the Texas Disciplinary Rules of Professional Conduct so long as they do not communicate any information identifying any victim or witness or any information that by reference would make it possible to identify the victim or witness.¹³ The exception to this rule is that attorneys may disclose such identifying information to an administrative, law enforcement, regulatory, or licensing agency for the purpose of making a good faith complaint, unless prohibited under another rule.¹⁴

Subsection (h) of the bill codifies the Supreme Court's holding in *Brady v. Maryland*. This subsection requires that the State disclose to the defendant any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of

THE MICHAEL MORTON ACT TAKES EFFECT JANUARY 1, 2014: QUESTIONS AND ANSWERS

1. Does the Act contain any specific provisions for discovery in either municipal or justice courts?

No, it does not. S.B. 1611 (effective January 1, 2014) is a “one size fits all” approach to remedying deficiencies in the discovery process in Texas criminal cases. Article 45.002 of the Code of Criminal Procedure provides that if Chapter 45 (which governs criminal proceedings in municipal and justice courts) does not provide a rule or procedure, other general provisions of the Code of Criminal Procedure apply. Chapter 45 contains no rule or procedure governing discovery. Thus, municipal and justice courts are required to use Article 39.14 of the Code of Criminal Procedure. The Act amends Article 39.14.

2. How does the Act amend Article 39.14?

S.B. 1611 removed statutory language in Article 39.14(a), Code of Criminal Procedure, requiring a court in which a criminal action is pending to order the prosecution to produce information to the defense. Instead the prosecution must, as soon as practicable after receiving a timely request from the defendant and subject to certain restrictions, produce and permit the inspection and the electronic duplication of offense reports and recorded statements of witnesses, including statements by law enforcement officers, which contain evidence material to any matter involved in the action and are in the possession, custody, or control of the State or any person under a State contract.

3. What if a defendant does not have an attorney?

In the case of a pro se defendant, according to Article 39.14(d), Code of Criminal Procedure, if a court orders the State to produce and permit the inspection of a document, item, or information, prosecutors must permit the pro se defendant to inspect and review the document, item, or information, but does not have to allow electronic duplication of those materials in such a case.

4. Under the Act, who is responsible for responding to discovery requests?

The act places most of the burden on prosecutors by removing trial courts from the front end of the discovery process in an effort to ensure justice for criminal defendants. In cases involving pro se defendants, however, the court is still very much involved in the process. While prosecutors are ultimately the ones who will be turning over discovery, judges must order the prosecutor to provide discovery to pro se defendants under Article 39.14(d), Code of Criminal Procedure. This means that pro se defendants will either be requesting discovery through the court directly, or alternatively, prosecutors will forward any requests for discovery to the court to be reduced to an order.

5. Does the Act require that defendants be admonished of their right to discovery?

No. Article 39.14 contains no requirement that defendants be admonished of their right to discovery. The court’s primary obligation under the act is to ensure the documentation of any discovery that has been provided after either a timely request or an order from the court.

6. What are some methods that could be used by courts to ensure compliance with the new discovery rules?

Courts may require all requests for discovery (either to the prosecutor or the court) to be in writing. Upon receipt of a request from defense counsel or order from the court (in the case of pro se defendants), prosecutors can itemize the

list of things provided to the defendant for either inspection or duplication. Prosecutors can sign the list and request the defendant/defense counsel to sign as well upon the disclosure of the information. The signed acknowledgement can be presented to the court or put in the file for the judge to see before trial. Presumably, this process will occur after the entering of a not guilty plea. If so, this will satisfy the “or before trial” requirement under 39.14(j). If a request comes in before a plea is entered, the same process could apply.

7. Does an acknowledgement have to exist before any guilty or no contest plea is ever taken?

No. Article 39.14(j) states that before a court accepts a plea of guilty or nolo contendere, or before trial, each party shall acknowledge in writing or on the record in open court the disclosure, receipt, and list of all documents, items, and information provided to the defendant under this article. If nothing has been provided, then arguably there is nothing to acknowledge.

8. How will the court know if there has been any discovery provided in order to ascertain the necessity of the statement?

It is possible that a court may not know. Similarly, the Act did not contemplate the manner in which uncontested Class C misdemeanors cases are commonly handled in municipal and justice courts. There is an abundance of both pro se defendants and uncontested cases in municipal court, and pleas are taken without the knowledge of prosecutors and before they have any discovery in their custody. It is important to remember that discovery will only be provided either on request of represented counsel or on order of the court for pro se defendants. In either situation, the person with knowledge of what discovery was provided will be the prosecutor. It is encouraged that any time discovery is provided to a defendant (or defense counsel) that an itemized acknowledgment be signed by the parties at the time the discovery is presented, and a copy be given to the court for the case file. Additionally, judges will know if pro se defendants should have received discovery as the statute requires them to order it. Judges should note in the docket when they order discovery, so that they can verify that an acknowledgment is on file before accepting a plea.

9. Does the Act mandate additional language be added to citations or plea forms?

No. The law does not mandate additional information be added to citations. However, local governments may, nonetheless, opt to amend citations or supplement citations with additional information in an effort to comply with Article 39.14(j). There are differing ways this could be done. Generally, however, they require the defendant to acknowledge that they have not requested any discovery and have not been provided any by the prosecution.

10. Does an acknowledgement relieve the State attorney from providing any subsequent *Brady* evidence?

No. To the contrary, *Brady* evidence has now been specifically addressed within Article 39.14(h) and (k), Code of Criminal Procedure. The State must always turn over any exculpatory or mitigating evidence whenever it is discovered whether it is before, during, or after trial.

the State that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged. The bill also now requires that if at any time before, during, or after the trial, the State discovers any document, item, or information that it is required to disclose under Subsection (h), then the State must promptly disclose such document, item, or information to the defendant or the court.¹⁵

A new provision in Article 39.14, Subsection (i), provides that the State must electronically record or otherwise document all discovery materials or information provided to the defendant.

To provide even further protection to the defendant in the discovery process, the bill requires that before accepting a guilty or nolo contendere plea, or before trial, each party must acknowledge in writing or on the record in open court the disclosure and receipt of discovery materials, and to list all materials and information provided to the defendant under Article 39.14.¹⁶

The bill also adds a provision allowing courts to order a defendant to pay discovery related costs, so long as the costs do not exceed those provided by Subchapter F, Chapter 522 of the Government Code.¹⁷ However, to the extent that Article 39.14 and Chapter 552 of the Government Code conflict, Article 39.14 prevails.¹⁸

Finally, in its last provisions, the bill clarifies that the parties may agree to discovery and documentation requirements that are equal to or greater than those provided by Article 39.14.¹⁹ Parties in a criminal case may never agree to discovery requirements that are less than those provided by Article 39.14.

S.B. 1611 carves out an exception for pro se defendants, but it is unclear how the Legislature intended it to work. Nowhere in the bill does it explain the distinction between defendants and pro se defendants. This is problematic considering that pro se defendants are actually defendants. The most reasonable interpretation of the bill is that pro se defendants will still need an order from the court to obtain discovery. In that case, does the prosecutor need to turn over to the court a pro se defendant's discovery request? Or does the prosecutor wait until the court orders the State to turn over discovery materials? The statute provides little guidance on this issue.

S.B. 1611 provides that the State must allow the pro se defendant to inspect and review the discovery materials, but may refuse to allow electronic duplication of documents. Noticeably, this provision never mentions copying or photographing. However, it also fails to define the term electronic duplication. When construing statutes, it is presumed that the entire statute is intended

to be effective.²⁰ For every word in a statute to be effective, each word must have a distinct meaning. Thus, electronic duplication means something distinct from copying or photographing. Is the State required to allow a pro se defendant to both copy and photograph discovery materials? Or is the State only required to permit pro se defendants to inspect and review the documents without allowing any method of duplicating such materials?

The bill also requires that before accepting pleas both parties acknowledge in writing or on the record in open court the disclosure of all documents, items, and information provided to the defendant. How is this subsection going to work in the context of either jailhouse or mailed pleas? When a judge takes a jailhouse plea, it is unlikely that the State has yet turned over any discovery materials and that the prosecutor will be present at the jail. When the State has not turned over any discovery materials, do the parties need to acknowledge in writing or on the record in open court that they have not received any discovery materials? For pleas by mail, may the court accept this plea without an acknowledgment by both parties? Or are certain types of pleas an exception to this rule because any other construction of the statute would lead to an absurd result?²¹

IV. Conclusion

It remains to be seen whether S.B. 1611 will have the intended effect of creating a fair criminal discovery process. The undefined terms and the unexplained exception for pro se defendants may cause problems for prosecutors and defendants further down the road.

¹ *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

² Art. 39.14(a), Code of Criminal Procedure.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Art. 39.14(c), Code of Criminal Procedure.

⁹ *Id.*

¹⁰ Art. 39.14(d), Code of Criminal Procedure.

¹¹ Art. 39.14(e), Code of Criminal Procedure.

¹² Art. 39.14(f), Code of Criminal Procedure.

¹³ Art. 39.14(g), Code of Criminal Procedure.

¹⁴ *Id.*

¹⁵ Art. 39.14(k), Code of Criminal Procedure.

¹⁶ Art. 39.14(j), Code of Criminal Procedure.

¹⁷ Art. 39.14(l), Code of Criminal Procedure.

¹⁸ Art. 39.14(m), Code of Criminal Procedure.

¹⁹ Art. 39.14(n), Code of Criminal Procedure.

²⁰ Sec. 311.021(2), Government Code.

²¹ *See*, Secs. 311.021(3), (4), Government Code.



E-cigarettes continued from pg. 1

When the user draws in, a switch turns on a mini-heating element and produces a vapor, which comes in a variety of flavors.⁵ The first e-cigarette was patented in 1963,⁶ but its current form entered the market in 2007 when a Chinese pharmacist reportedly invented a device that vaporized nicotine using powerful miniature lithium batteries.⁷ Users can receive the amount of nicotine in two packs of traditional cigarettes in just one e-cigarette, costing as little as \$7.99.⁸ Manufacturers say most e-cigarettes release only the vapor of nicotine and stabilizing chemicals like propylene glycol, a common food preservative, instead of hundreds of toxic chemicals released by a traditional tobacco cigarette.⁹ Users can find e-cigarettes at vapor shops, which sell disposable and refillable e-cigarettes and the liquid that refills them. There are at least 40 such establishments in Texas.¹⁰ Cities in Texas and across the country are wrestling with what to do with e-cigarettes, mainly due to the lack of action by the federal government.

The gap in federal regulation stems from the lack of classification of e-cigarettes. The Federal Drug Administration (FDA) first attempted to regulate them as medical devices, but the U.S. Court of Appeals for the District of Columbia Circuit rejected such an attempt.¹¹ The FDA has since stated its intention to issue a proposed rule that deems e-cigarettes a “tobacco product,” bringing them under the Tobacco Control Act.¹² As of this writing, proposed regulations to limit sales to minors, marketing practices, and study health effects of the devices are currently under review at the White House’s Office of Management and Budget.¹³ The FDA’s proposed regulations come at the behest of attorneys general from 42 states (Texas was not one of them).¹⁴ Designation as a tobacco product will determine how e-cigarettes are taxed and whether they are subject to the same indoor bans imposed on traditional smoking materials. In the interim, if state laws classify e-cigarettes differently (i.e., not a tobacco product), a problem will arise as such classification will conflict with future tobacco regulation.¹⁵

As 2013 came to a close, cities and states throughout the U.S. continued to implement laws regulating e-cigarettes. Almost half the states have banned the sale of e-cigarettes to minors.¹⁶ New York made recent headlines by raising the legal age for tobacco sales, including e-cigarettes, to 21. Four states have added e-cigarettes to current indoor smoking bans: New Jersey, Arkansas (its ban only covers school campuses), Utah, and North Dakota.¹⁷ New Jersey was the first state to specifically ban “electronic vaping” in public places, including bars and restaurants in



2010.¹⁸ Utah, North Dakota, and cities across the nation followed. While Texas’ neighbor to the north, Oklahoma, recently enacted statewide regulations,¹⁹ no Texas law or court case specifically mentions e-cigarettes. Section 161.081 of the Texas Health and Safety Code defines “cigarette” and “tobacco product” with the meanings respectively assigned to those terms by the Tax Code.²⁰ Section 154.001 of the Tax Code defines “cigarette” as a roll for smoking that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco, and that is not a cigar.²¹ The relevant part of Section 155.001 of the Tax Code defines “tobacco product” as an article or product that is made of tobacco or a tobacco substitute and that is not a cigarette.²² While there may be an argument that e-cigarettes are a tobacco substitute, manufacturers seem to have pulled back from advertising as a method to quit smoking to avoid regulation by the FDA as a medical device.²³ Some Texas cities have, however, taken action in the absence of state or federal regulation. The City of Murphy banned the possession and sale of e-cigarettes to minors in November of 2013.²⁴ Rockwall is considering a similar ban.²⁵ Mansfield adopted a six-month moratorium on new e-cigarette shops while it considers how e-cigarettes fit into the city’s smoking ordinance.²⁶ Richardson requires a special permit for e-cigarette businesses, but has exempted e-cigarettes from its smoking ban in public places.²⁷ Likewise, San Marcos and San Antonio have excluded e-cigarettes from

their respective public smoking bans.²⁸ Lufkin's smoking ordinance, on the other hand, includes e-cigarettes.²⁹ Nacogdoches officials are currently looking into how e-cigarettes fit into the city's smoking ban.³⁰ Efforts to regulate e-cigarettes have been met with counter-efforts to prohibit regulation. For example, organizations like StopECB.org monitor regulatory efforts in Texas.³¹

Until the FDA's proposed regulations are released for public comment, local and state governments will have to wait and see or be prepared to adapt or repeal any laws adopted while the FDA continues to work and deliberate. However, that process could take up to two years and local pressure may continue to build. In 2013, there were no efforts by the Texas Legislature to regulate e-cigarettes. However, as e-cigarettes continue to garnish media attention, it is hard to imagine an absence of efforts to pass statewide legislation in 2015. State and federal regulatory efforts potentially raise preemption issues for municipalities.³² Because of the potential for future state and federal regulation, local governments, particularly cities that choose to regulate e-cigarettes by ordinance, will have to keep a vigilant eye on the horizon for such developments.

¹ Daniel Fisher, *Will Taxes and Regulation Rein in the Booming E-Cigarette Market?*, Forbes, <http://www.forbes.com/sites/danielfisher/2013/10/02/will-taxes-and-regulation-rein-in-the-booming-e-cigarette-market> (October 2, 2013). The entire e-cigarette market was expected to reach \$1.7 billion in the U.S. in 2013. Compare this to the expected \$80 billion for traditional cigarettes.

² Tobacco Control Legal Consortium, *Regulatory Options for Electronic Cigarettes*, <http://publichealthlawcenter.org/resources/regulatory-options-electronic-cigarettes-2013> (accessed December 30, 2013).

³ Tobacco Control Legal Consortium, *Regulating E-Cigarettes*, <http://publichealthlawcenter.org/sites/default/files/resources/tclc-guide-regecigs-2011.pdf> (accessed December 30, 2013).

⁴ *Id.* Other chemicals could include liquid marijuana. A man from Edcouch, Texas faces federal charges after sending e-cigarettes filled with THC, the active chemical ingredient in marijuana, by mail. Sergio Chapa, Valley Central.com, *E-cigarettes filled with liquid marijuana land Edcouch man in jail*, <http://www.valleycentral.com/news/story.aspx?id=970705#.UsM-D7R1nMM> (November 12, 2013).

⁵ *See*, endnote 2.

⁶ Gilbert, H.A. "Smokeless Non-Tobacco Cigarette." Patent 3,200,819. 17 August 1965. This patent is available online at http://www.google.com/patents?id=RjlUAAAAEBAJ&printsec=abstract&zoom=4&source=gbs_overview_r&cad=0#v=onepage&q&f=false.

⁷ *See*, endnote 1.

⁸ *See*, endnote 1.

⁹ *See*, endnote 1. For more on the potential health risks of e-cigarettes and the lack of clinical studies, *see*, endnote 2.

¹⁰ Guide to Vaping, *Vapor Shops*, <http://www.guidetovaping.com> (accessed December 30, 2013).

¹¹ *Sottera, Inc. v. Food & Drug Admin.*, 627 F.3d 891 (D.C. Cir. 2010).

¹² U.S. Food and Drug Administration, News & Events, *Electronic*

Cigarettes, <http://www.fda.gov/newsevents/publichealthfocus/ucm172906.htm> (accessed December 30, 2013). The Family Smoking Prevention and Tobacco Control Act, commonly referred to as the Tobacco Control Act gives the FDA authority to regulate the manufacture, distribution, and marketing of tobacco products to protect public health. For more information on the Act, visit the FDA website at <http://www.fda.gov>.

¹³ *See*, endnote 1.

¹⁴ National Association of Attorneys General, Letter to the FDA urging regulation, <http://www.naag.org/assets/files/pdf/signons/E%20Cigarette%20Final%20Letter%20w%20Florida.pdf> (accessed December 30, 2013).

¹⁵ For example, Arizona's recent ban on e-cigarette sales to minors designates e-cigarettes as a "vapor product." Section 13-3622, Arizona Revised Statutes.

¹⁶ Jake Grovum, Staff Writer, Stateline, The Daily News Service of the Pew Charitable Trusts, *States Move on E-Cigarettes as Washington Delays*, <http://www.pewstates.org/projects/stateline/headlines/states-move-on-e-cigarettes-as-washington-delays-85899525111> (December 9, 2013).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *E-Cigarette Ban in Oklahome; Not Affecting Texas Sales*, <http://www.texomashomepage.com/story/e-cigarette-ban-in-oklahoma-not-affecting-texas-sa/d/story/X8LhyOut2k2mcpekYFvbJg> (accessed January 17, 2014).

²⁰ Section 161.081(1) and (5), Health and Safety Code.

²¹ Section 154.001(2), Tax Code.

²² Section 155.001(15)(E), Tax Code.

²³ Under the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C.S. § 301 et seq., the FDA has authority to regulate articles that are drugs, devices, or drug/device combinations. 21 U.S.C.S. § 321(g)(1) defines drugs to include articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals. *See, Soterra*, 627 F.3d at 894. Proponents of e-cigarettes promulgate their use as a method to quit smoking.

²⁴ Murphy City Council Minutes, <http://www.murphytx.org/Archive/ViewFile/Item/662> (accessed December 30, 2013).

²⁵ Andrew Scoggin, Dallas Morning News, *Rockwall Considering Ban on E-Cigarette Sales to Minors*, <http://www.dallasnews.com/news/community-news/rockwall-rowlett/headlines/20131204-rockwall-considering-ban-on-e-cigarette-sales-to-minors.ece> (December 4, 2013).

²⁶ Julieta Chiquillo, Staff Writer, Dallas Morning News, *Dallas-area Cities Wrestle with Regulation of E-Cigarettes*, <http://www.dallasnews.com/news/metro/20131217-dallas-area-cities-struggle-with-regulation-of-e-cigarettes.ece> (December 17, 2013).

²⁷ *Id.*

²⁸ James Carneiro, The University Star, *Smoking e-cigarettes to be allowed in vape shops after ordinance amendment*, <https://star.txstate.edu/node/1234> (November 20, 2013); Jessica Belasco, San Antonio Express News, *E-cigarettes on rise, but questioned*, <http://www.expressnews.com/news/local/article/E-cigarettes-on-rise-but-questioned-4857591.php> (October 1, 2013).

²⁹ Lufkin Penal Ordinance No. 429, <http://www.cityoflufkin.com/pdfs/2013/Smoking%20Ordinance%20No.%20429.pdf> (accessed December 30, 2013).

³⁰ Donna McCollom, KTRE, *Nacogdoches Officials Looking into Banning E-Cigarettes*, <http://www.ktre.com/story/23571395/nacogdoches-officials-looking-into-banning-e-cigarettes> (September 30, 2013).

³¹ *See*, STOPECB.ORG, <http://www.electroniccigaretteban.org/State-Texas-ecigs-ban.htm> (accessed January 17, 2014).

³² Municipalities seeking to regulate e-cigarettes should consult an attorney. For regulatory options for electronic cigarettes, *see*, endnote 2.



TRAFFIC SAFETY: NEWS YOU CAN USE

DESIGNER DRUGS: HOW DRIVERS MIGHT BE CIRCUMVENTING INTOXICATED DRIVING LAWS

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In society's eyes, driving under the influence of drugs often takes a back seat to drunk driving. Drugged driving, however, is widespread and merits serious attention. In 2012, the National Survey on Drug Use and Health concluded that approximately 10.3 million people age 12 and over had driven under the influence of drugs in the year prior to the survey.¹ Perhaps more startling, the National Highway Traffic Safety Administration (NHTSA) found in 2007 that about one in eight nighttime drivers on the weekend tested positive for illicit drugs.²

“Designer drugs” represent a unique problem as they relate to traffic safety. This is because they are, by their traditional definition, legal to use. Designer drugs are chemicals specially designed such that they are not covered by illegal drug laws, thus making them technically legal to buy, sell, and possess. Frequently, the molecular structure of an illegal drug will be just slightly altered such that the new composition falls outside the scope of illegal drugs as they are classified by law. These chemicals, of course, still possess a similar psychotropic effect (i.e., euphoria, hallucinations, etc.) as the illegal drug from which they were derived. Designer drugs are typically packaged and marketed as something other than a psychotropic agent. For example, Spice, also known as K2, a plant material designed to mimic the effects of THC (the chemical found in marijuana), may be packaged and marketed as incense.³ Another common designer drug is bath salts, which are designed to have effects similar to cocaine. There may be warnings on bath salts packaging, such as: Not for Human Consumption. Such warnings are undoubtedly provided for the primary purpose of helping circumvent the law.⁴

In just the last few years there have been strong legal efforts to outlaw designer drugs. In 2011, while a handful of municipalities had already imposed their own bans on certain designer drugs,⁵ the Texas Legislature decided to implement a statewide ban. Under S.B. 311 and H.B. 2118, Texas outlawed synthetic marijuana (i.e., Spice/K2) and bath salts.⁶ These bills are codified in Section 481 of the Texas Health and Safety Code. Specifically, five

prevalent chemicals found in K2 were placed on Schedule I of the Texas Schedules of Controlled Substances—the most restrictive drug category.⁷ Manufacture, sale, or possession is a Class A or B misdemeanor. In 2012, the federal Synthetic Drug Abuse Prevention Act of 2012 was passed. This federal law bans synthetic marijuana, synthetic stimulants, and synthetic hallucinogens.⁸ Underground chemists, though, are constantly seeking to conjure up new psychoactive formulas that would get around the latest drug laws. With new formulas emerging all the time, it is extremely challenging for lawmakers to keep up.

There is an undeniable danger of driving under the influence of so-called designer drugs. Just like their illegal counterparts, these legal drugs are able to seriously impair the user's cognitive and motor skills. Adults over 21 years of age may legally consume alcohol, but there are finite rules as to how much alcohol may be in an adult's system before they are considered “intoxicated” by law. Drugs, on the other hand, do not have such legal limits. A couple possible reasons for this are that (1) measuring the amount of drugs in one's system requires complicated tests that can only be performed by a doctor, and (2) many drugs are illegal on their own, so setting a per se limit would in effect permit law breaking. So, when it comes to legal drugs, we are left with a subjective test for when a person is considered “intoxicated” and thus cannot legally operate a vehicle. Section 49.01 of the Texas Penal Code provides that “intoxicated” means that one does not have the “normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance...[or] a drug.” If a person is over the legal blood alcohol limit, this test is easily met. Prosecutors in drugged driving cases, however, face a much harder challenge in trying to prove impairment.

In the field, there is no objective Breathalyzer-like device to test for drugs; a drug test must be conducted at a hospital. Many drugged drivers, however, will never be tested because police officers are less likely to be able to identify the signs of drug impairment as they are to be able to identify alcohol impairment.⁹ This is especially true where a motorist is under the influence of a less common drug whose effects may be foreign to law enforcement.

Legal prescription or over-the-counter drugs can also be dangerous when a user gets behind the wheel—even just a regular therapeutic dose. For example, the common anti-anxiety prescription drug, Xanax, slows down the chemical movements in the brain. Ambien, a sleep aid, can unsurprisingly cause drowsiness. The problems associated with driving under the influence of these drugs parallel the problems associated with driving under the influence of designer drugs.



Even if a drug test is ordered, most hospitals will only test for a handful of well-known drugs, such as marijuana, cocaine, and LSD.¹⁰ Legal drugs will almost certainly not be tested for. Furthermore, drug tests typically only determine the presence or absence of a drug in one's system.¹¹ Therefore, in the unlikely event that a legal drug is tested for and there is a positive result, the driver can argue that there was only a minimal amount in his or her system and that it did not affect his or her physical or mental faculties.

These are some of the difficulties associated with drugged driving, and particularly driving under the influence of legal drugs. While it is not quite as cut and dried as drunk driving, it needs to be addressed and prevented with comparable vigilance.

¹ National Institute on Drug Abuse, *DrugFacts: Drugged Driving*, <http://www.drugabuse.gov/publications/drugfacts/drugged-driving> (October 2013).

² Office of National Drug Control Policy, *Drugged Driving*, <http://www.whitehouse.gov/ondcp/drugged-driving> (accessed January 8, 2014).

³ For an example, *see*, <http://www.k2spice.net/> (online retailer).

⁴ Abby Goodnaugh and Katie Zezima, *An Alarming New Stimulant, Legal in Many States*, New York Times, http://www.nytimes.com/2011/07/17/us/17salts.html?pagewanted=all&_r=0 (July 16, 2011).

⁵ Cathy Reidel, *K2 -- What's the Buzz About?*, The Recorder (January 2011) at 7.

⁶ PRWeb, *New Texas Drug Laws Recently went into Effect*, http://www.prweb.com/releases/2012_Texas/Drug_Legislation/prweb9241246.htm (March 2012).

⁷ Texas Department of State Health and Services, *Texas Outlaws Marijuana-like Substances*, <http://www.dshs.state.tx.us/news/releases/20110420.shtm> (April 2011).

⁸ Sen. 3190, 112th Cong. (May 16, 2012).

⁹ Warren Diepraam, *10 Myths about Drugged Driving*, The Prosecutor, Vol. 42 No. 4, July-August 2012, <http://www.tdcaa.com/journal/10-myths-about-drugged-driving>.

¹⁰ *Id.*

¹¹ *Id.*

NATIONAL NIGHT OUT

National Night Out is a great opportunity for citizens and law enforcement to partner up against crime. Municipal courts and the MTSI/DRSR projects can play a part in this community event by setting up exhibits of traffic safety materials, as well as supporting local events. On October 1, 2013, residents in neighborhoods across Texas were asked to turn on their porch lights, lock their doors,

and spend the evening outside with their neighbors, police officers, firefighters, and EMS paramedics. Congratulations to the courts listed below for joining this important event! For more information, go to <http://natw.org/>. In Texas it is usually held in the fall rather than late summer due to the summer heat.

- | | | | | |
|-------------------------|-----------------------|-------------------|--------------------------|------------------------|
| 1. Alice | 12. Burleson | 23. Irving | 34. Nacogdoches | 45. South Padre Island |
| 2. Alvin | 13. Cockrell Hill | 24. Italy | 35. North Richland Hills | 46. Southside Place |
| 3. Argyle | 14. College Station | 25. Katy | 36. Patton Village | 47. Taft |
| 4. Arlington | 15. Decatur | 26. Lakeway | 37. Princeton | 48. Temple |
| 5. Balcones Heights | 16. Edgecliff Village | 27. Lewisville | 38. Richland Hills | 49. Tom Bean |
| 6. Bastrop | 17. Forest Hill | 28. Liberty | 39. Roanoke | 50. Victoria |
| 7. Bells | 18. Friona | 29. Lockhart | 40. Rockport | 51. Windcrest |
| 8. Bevil Oaks | 19. Glenn Heights | 30. Lone Oak | 41. Roman Forest | 52. Winnsboro |
| 9. Boerne | 20. Groveton | 31. Magnolia | 42. Royse City | 53. Wylie |
| 10. Bryan | 21. Harker Heights | 32. Missouri City | 43. Sansom Park | |
| 11. Bunker Hill Village | 22. Hurst | 33. Moulton | 44. Seguin | |



EXAMPLES OF IMPROPER JUDICIAL CONDUCT

The following are examples of judicial misconduct that resulted in disciplinary action by the Commission in fiscal year 2013. These are illustrative examples of misconduct and do not represent every disciplinary action taken by the Commission in fiscal year 2013. The summaries below are listed in relation to specific violations of the Texas Code of Judicial Conduct, the Texas Constitution, and other statutes or rules. They are also listed in ascending order of the severity of the disciplinary action imposed, and may involve more than one violation. The full text of any public sanction is published on the Commission website. A copy of any public disciplinary record may also be requested by contacting the Commission.

These sanction summaries are provided with the intent to educate and inform the judiciary and the public regarding misconduct that the Commission found to warrant disciplinary action in fiscal year 2013. The reader should note that the summaries provide only general information and may omit mitigating or aggravating facts that the Commission considered when determining the level of sanction to be imposed. Additionally, the reader should not make any inference from the fact situations provided in these summaries.

It is important to remember that the purpose of judicial discipline is not to punish the judge for engaging in misconduct but to protect the public by alerting them that conduct that violates the public trust will not be condoned. However, the reader should note that not every transgression reported to the Commission will, or should, result in disciplinary action. The Commission has broad discretion to determine whether disciplinary action is appropriate, and the degree of discipline to be imposed. Factors such as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system, will inform and impact the Commission's decision in each case. It is the Commission's sincere desire that providing this information will protect and preserve the public's confidence in the competence, integrity, impartiality and independence of the judiciary and further assist the judiciary in establishing, maintaining and enforcing the highest standards of conduct—both on the bench and in their personal lives.

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

- The judge failed to comply with the law, demonstrated a lack of professional competence in the law, and failed to accord a litigant the right to be heard when he (1) failed to provide a litigant with notice and an opportunity for a hearing to resolve a speeding citation once that citation was filed with the court, (2) failed to enter a final written judgment assessing a fine and court costs, and (3) allowed the matter to go into warrant status in the absence of the requisites recited above. The judge also failed to comply with the law and demonstrated a lack of professional competence in the law when he assessed postjudgment interest at a rate that exceeded the maximum allowed by law. [Violation of Canons 2A, 3B(2), and 3B(8) of the Texas Code of Judicial Conduct.] Private Order of Additional Education of a Justice of the Peace. (11/07/12).
- The judge failed to maintain professional competence in the law when she repeatedly imposed monetary sanctions against the parties during a hearing, without a finding of contempt, and then ordered the parties to either pay the sanctions to a charity or face incarceration. In addition, the judge repeatedly made threats to impose unauthorized monetary sanctions and/or to incarcerate the parties as an intimidation tactic to ensure order in her courtroom. Moreover, the judge failed to perform judicial duties without bias or prejudice, exhibited an improper judicial demeanor, and engaged in a persistent pattern of questioning only the husbands in these hearings in a manner that gave rise to the impression that the judge was assisting the wives in the prosecution of their cases. [Violation of Canons 2A, 3B(2), 3B(4), and 3B(5) of the Texas Code of Judicial Conduct.] Private Admonition of a District Judge. (11/12/12).
- The judge failed to follow the law and demonstrated a lack of professional competence in the law by not following the correct procedures for selecting and seating a jury in a civil proceeding. In addition, the judge used a jury

verdict form in a civil proceeding that was applicable only to a criminal proceeding, and failed to correct this error when it was brought to his attention through an objection from a litigant. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] Private Order of Additional Education of a Justice of the Peace. (11/26/12).

- The judge failed to comply with the law in when she (1) signed written orders and judgments in a criminal case that did not include the date on which the defendant was to begin serving his sentence; (2) orally ordered the defendant to turn himself in at a future time to begin serving his sentence; (3) orally ordered the defendant to report once a week to a probation office until that time, but; (4) failed to suspend the defendant's sentence or place specified conditions in a written order of judgment; and (5) failed to correct the matter after nearly five years had passed without the defendant having served any part of his sentence. Further, in two other matters, the judge failed to treat a law firm and a litigant with the patience, dignity, and courtesy expected of a judicial officer. [Violation of Canons 2A and 3B(4) of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution.] Private Warning of a District Judge. (03/06/13).
- The judge failed to comply with the law and failed to maintain professional competence in the law when he found an attorney in direct contempt of court for allegedly "lying" to the court. The judge failed and/or refused to give the attorney an opportunity to be heard in defense of the judge's accusations, and instead, summarily found the attorney in criminal contempt of court, ordered him handcuffed, and placed him in a holding cell until a \$500 fine was paid. The judge failed to issue a written contempt or commitment order from which the attorney could have challenged his detention through a writ of habeas corpus. [Violation of Canons 2A, 3B(2), and 3B(4) of the Texas Code of Judicial Conduct.] Private Reprimand of a District Judge. (03/07/13).
- The judge failed to comply with the law and demonstrated a lack of professional competence in the law in her initial handling of a traffic defendant's case. The court's "courtesy letter" to defendant contained erroneous information, including the fact that a fine had already been assessed against her; the only option available to the defendant was to enter a guilty or no contest plea and pay the fine; and an arrest warrant would be issued for the offense of "violate promise to appear" if the defendant did not enter the plea or pay the fine. If the defendant had complied with these instructions, she would have been deprived of her right to a trial. [Violation of Canons 2A, and 3B(2) of the Texas Code of Judicial Conduct.] Private Order of Additional Education of a Justice of the Peace. (03/21/13).
- The judge failed to follow the law and demonstrated a failure to maintain professional competence in the law when he: (1) failed to afford defendants the opportunity to enter a plea of not guilty and to ask for a trial prior to questioning them about the merits of the case and their defense; (2) failed to advise defendants at their first court appearance of their constitutional rights; (3) required defendants to appear for status hearings each month in order to monitor their conduct at school, without having the defendants enter a guilty or no contest plea and/or without placing the defendants on deferred disposition; (4) failed to issue proper deferred disposition orders informing defendants of the terms of their deferral; (5) conducted criminal proceedings, including the questioning of defendants and witnesses about the merits of the case and their defenses to the charges, outside the presence of the prosecutor; (6) dismissed cases without a motion from the prosecutor; and (7) failed to maintain docket sheets containing the requisite information set forth in the Texas Code of Criminal Procedure. [Violation of Canons 2A, 3B(2), and 6C(2) of the Texas Code of Judicial Conduct.] Private Admonition and Order of Additional Education to a Municipal Court Judge. (03/25/13).
- The judge failed to comply with the law and demonstrated a lack of professional competence in the law by dismissing certain criminal cases without a motion from the State, including cases involving his brother-in-law and sister-in-law, which he was legally disqualified from handling altogether. Further, the judge exhibited an impermissible bias and failed to be patient, dignified, and courteous in his dealings with members of the police department. Finally, the judge's refusal to fully cooperate with the Commission's investigation became an aggravating factor regarding the imposition of this sanction. [Violation of Canons 2A, 3B(1), 3B(2), 3B(4), and 3B(5) of the Texas Code of Judicial Conduct, and Article V, §1-a(6)A of the Texas Constitution.] Private Warning of a Justice of the Peace. (04/08/13).
- The judge failed to follow the law and demonstrated a lack of professional competence in the law when he erroneously issued a capias pro fine warrant against a defendant, who subsequently spent 5 days in jail at least in part as a result of the condition laid out in the capias pro fine warrant. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] Private Admonition and Order of Additional Education of a Justice of the Peace. (04/15/13).

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- The judge improperly intervened in a defendant's case by ordering the defendant released on a personal bond after another judge had already magistrates and set a surety bond for the defendant and after the defendant's case had already been filed and assigned to a district court. [Violation of Canons 2A, 2B, and 3B(2) of the Texas Code of Judicial Conduct.] Private Admonition and Order of Additional Education of a Justice of the Peace. (05/23/13).
 - The judge failed to comply with the law and demonstrated a lack of professional competence in the law when she attempted to mediate a dispute resulting from a physical altercation between two citizens when no case was pending in her court. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] Private Order of Additional Education of a Municipal Court Judge. (07/09/13).
 - The judge failed to follow the law and demonstrated a lack of professional competence in the law when he removed a criminal defendant's court-appointed attorney based solely on the fact that a family member had posted a pretrial bond to obtain the defendant's release from jail. The judge took this action without conducting an indigency hearing and without making any finding on the record that there had been a material change in the defendant's financial circumstances that warranted removal of his court-appointed counsel. [Violation of Canons 2A, 3B(2), 3B(8) of the Texas Code of Judicial Conduct.] Private Reprimand of a Retired District Judge. (08/19/13).

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

- The judge failed to comply with the law and demonstrated a lack of professional competence in the law when she accepted a criminal complaint, performed her own independent investigation into the merits of the case, and then dismissed the matter in a manner not authorized by law. The judge further demonstrated an impermissible bias in favor of the complaining witness, and lent the prestige of her judicial office to advance the private interests of that person by facilitating a financial settlement of a criminal dispute between the complaining witness and the defendant. [Violation of Canons 2A, 2B, 3B(2), and 3B(5) of the Texas Code of Judicial Conduct.] Private Warning of a Municipal Court Judge. (11/27/12).
- The judge made a phone call to the arresting police officer on behalf of a friend, which was perceived by the officer as an improper attempt by the judge to use of the prestige of judicial office to advance the arrestee's private interests. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] Private Admonition of a Municipal Court Judge. (08/19/13).

CANON 3B(1): A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.

- The judge failed to follow the law and demonstrated a lack of professional competence in the law when he magistrates his grandson. Although the judge was not similarly disqualified from magistrating a friend of the judge's grandson, a material fact witness in the case involving the grandson, the fact that the grandson's father contacted the judge on behalf of the material fact witness created a perception that the judge was providing special or favorable treatment to family and friends. [Violation of Canons 2A and 3B(1) of the Texas Code of Judicial Conduct.] Private Order of Additional Education of a Justice of the Peace. (04/15/13).
- The judge failed to make a reasonable inquiry to determine if he had a disqualifying relationship in a matter where his niece, a relative within the third degree of consanguinity, was a manager of a business that was a litigant in the judge's court. [Violation of Canons 2A, 3B(1) and 3B(2) of the Texas Code of Judicial Conduct.] Private Admonition and Order of Additional Education of a Justice of the Peace. (07/16/13).

CANON 3B(3): A judge shall require order and decorum in proceedings before the judge.

- The judge wore a Halloween costume while presiding over a misdemeanor criminal docket, which demonstrated a failure to conduct court proceedings with the proper order and decorum, and a failure to treat the defendants, victims, and their family members with appropriate dignity. [Violation of Canons 3B(3) and 3B(4) of the Texas Code of Judicial Conduct, and Article V, §1-a(6)A of the Texas Constitution.] Private Reprimand of a County Court at Law Judge. (08/19/13).

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

- The judge erred in his handling of a contempt situation involving a witness by detaining and handcuffing the witness for the purpose of public humiliation and/or to make an example out of the contemnor, rather than for the purpose of quelling a disturbance. The judge failed to treat the witness with the requisite patience, dignity or courtesy expected of a judicial officer. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] Private Admonition and Order of Additional Education of a Justice of the Peace. (02/01/13).
- The judge failed to maintain patience, courtesy, and dignity toward individuals with whom she deals in an official capacity. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution.] Private Admonition of a Justice of the Peace. (06/26/13).

CANON 3B(6): A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not knowingly permit staff, court officials and others subject to the judge's direction and control to do so.

- The judge manifested a bias or prejudice against a litigant based upon gender and socioeconomic status, and failed to remain fair and impartial toward litigants appearing before her, when she admonished a father not to have any children unless he had \$300,000 in the bank. [Violation of Canons 3B(5) and 3B(6) of the Texas Code of Judicial Conduct and Art. V, §1-a(6)A of the Texas Constitution.] Private Reprimand of an Associate Judge. (02/21/13).

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

- The judge's policy that required defendants who entered "not guilty" pleas and requested trials to sign a "Request for Trial" form before a notary public, placed an unreasonable burden on a defendant's fundamental rights to trial and access to the court. [Violation of Canons 2A, 3B(2) and 3B(8) of the Texas Code of Judicial Conduct.] Private Admonition and Order of Additional Education of a Justice of the Peace. (09/25/12).

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

- The judge's actions depicted in a 2004 videotape that was publicly released in 2011, cast reasonable doubt on his capacity to act impartially as a judge and interfered with the proper performance of his judicial duties. The doubt cast on the judge's capacity to act impartially and the interference caused by the videotaped conduct was evidenced by a letter from the TDFPS Commissioner, as well as by the testimony of several witnesses. The judge was not aware that he had been secretly videotaped and was not the person who released the videotape on the Internet; however, because the judge regularly presides over and decides child custody, child abuse, and family violence cases, his private conduct as depicted in the videotape did cast public discredit upon the judiciary and the administration of justice. The judge's treatment of certain attorneys in his courtroom fell far below the minimum standards of patient, courteous and dignified courtroom demeanor expected of judicial officials. [Violation of Canons 3B(4), 4A(1) and 4A(2), Article V, §1-a(6)A of the Texas Constitution.] Public Warning of Aransas County Court at Law Judge William Adams. (09/04/12).

CANON 4C(2): A judge shall not solicit funds for any educational, religious, charitable, fraternal or civic organization, but may be listed as an officer, director, delegate, or trustee of such an organization, and may be a speaker or a guest of honor at an organization's fund raising events.

- The judge solicited funds for a nonprofit corporation and lent the prestige of judicial office to advance her own private interests, and the private interests of the nonprofit corporation, when she (1) allowed the nonprofit corporation to send out a letter that included her name and judicial position and that encouraged past supporters to buy charitable raffle tickets; (2) contacted a State Senator in an effort to secure grant funding for the nonprofit corporation and drew attention to her position by discussing her “judicial reputation;” and (3) solicited public participation in fund raising operations to support the nonprofit corporation through the corporation’s website and Facebook postings. [Violation of Canons 2B and 4C(2) of the Texas Code of Judicial Conduct.] Private Reprimand of a Justice of the Peace. (04/23/13).

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

- The judge failed to comply with the law and engaged in willful conduct that was inconsistent with the proper performance of her duties and cast public discredit upon the judiciary or administration of justice by covering up for an employee’s late arrivals to work. [Violation of Article V, §1-a(6)A of the Texas Constitution and Canon 2A of the Texas Code of Judicial Conduct.] Private Reprimand of a Justice of the Peace. (09/17/12).
- The judge failed to disclose the nature and extent of his relationship with one of the attorneys involved in a case prior to trial, and refused to make the disclosure when directly asked about the relationship at a post-trial hearing and when the issue was later raised in a recusal motion that he denied. [Violation of Canon 3B(1) of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution.] Private Warning of a District Judge. (11/26/12).

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State Commission on Judicial Conduct

Updated: 21-Oct-2013

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Welcome to the State Commission on Judicial Conduct Online.

Welcome to the State Commission on Judicial Conduct, the independent Texas state agency created by an amendment to the Texas Constitution in 1965, that is responsible for investigating allegations of judicial misconduct or judicial disability, and for disciplining judges.

The State Commission on Judicial Conduct consists of [13 Commission Members](#) who each serve six-year terms, and a [staff of 14](#).

The State Commission on Judicial Conduct has jurisdiction, or authority, over the following Texas judges:

- municipal judges;
- magistrates;
- justices of the peace;
- constitutional county judges who perform judicial duties;
- county court at law judges;
- statutory probate judges;
- district judges;
- appellate judges;
- retired and former judges, sitting by assignment; and
- associate judges and masters.

The Commission is governed by [Article 5, Sec. 1-a, of the Texas Constitution](#), [Chapter 33 of the Texas Government Code \[pdf\]](#), and the [Procedural Rules for the Removal or Retirement of Judges \[pdf\]](#). The basic standard that guides the ethical conduct of all judges in Texas is the [Texas Code of Judicial Conduct \[pdf\]](#).



The National Judicial College

2014 Traffic Webcasts

Changes are continually occurring in the field of traffic related cases, especially in the areas of impaired and distracted driving. With this in mind, the National Judicial College is pleased to present three newly developed impaired driving traffic webcasts. Each webcast is a stand-alone program designed for any judge, ALJ, or hearing officer who handles traffic cases. The webcasts feature outstanding faculty, cutting-edge information, and helpful supplemental materials, which you can access from the comfort of your chambers or office. Tuition is free, but you must pre-register, and Continuing Legal Education credit is offered for each webcast. These webcasts are made possible by the generous funding from the National Highway Traffic Safety Administration.

Drugged Driving Essentials Update

Thursday, February 20, 2014

10:00 a.m. PT | 11:00 a.m. MT | 12:00 p.m. CT | 1:00 p.m. ET

Faculty: Hon. Peggy Hora, California

Any judge who hears impaired driving cases knows it isn't just about alcohol anymore. Impairment by drugs is outpacing alcohol impaired driving. As a traffic judge hearing these types of cases it is imperative to know the background of drugged driving issues, become familiar with the types of drugs being used, and learn how to effectively sentence participants who have drugged driving convictions. Trial judges must also be able to rule correctly on the unique legal issues in these cases. In this webcast, Judge Hora will present a brief overview on drugged driving issues and statistics, will provide an update on the new drugs that are being introduced to the public, discuss the manner in which these drugs impair driving, and point out some trial issues you will face.

FREE Registration: <http://bit.ly/192EDU2>

The Younger Driver: Distracted Driving Issues

Thursday, March 20, 2014

9:00 a.m. PT | 10:00 a.m. MT | 11:00 a.m. CT | 12:00 p.m. ET

Faculty: Hon. Lou Schiff, Florida

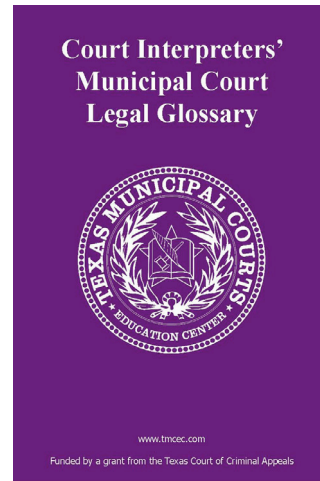
Motor vehicle accidents are the leading cause of death for drivers ages 14-18 in the United States. Twelve percent of teenaged drivers who were involved in a crash were distracted at the time of the crash, and in 2011, 505 people died in crashes in which a teen driver had alcohol in their system. With the rise in the number of teen driving-related issues appearing in our courts, it is important for judges to be able to recognize teen driving issues such as distracted and impaired driving, and determine effective ways in which to sentence these young drivers. During this webcast Judge Schiff will discuss the risks related to young drivers, and discuss how to develop strategies for imposing innovative and effective sentences for young drivers.

FREE Registration: <http://bit.ly/18XC8zt>

The NJC has previously presented various webcasts regarding traffic issues, which are available for viewing 24/7 at the NJC's website: <http://www.judges.org/webcasts/recorded/index.html>.

COURT INTERPRETERS' MUNICIPAL COURT LEGAL GLOSSARY

TMCEC has created a Spanish legal glossary for use by municipal courts. It is a combination of the glossary and definitions provided by the Texas Department of Licensing and Regulation (TDLR) for those studying to be licensed court interpreters in Spanish. Some modifications were made to be municipal court specific. Although by no means an exhaustive glossary of all applicable legal terms or the only possible choices for translation, TMCEC hopes this publication will provide a solid base from which our constituents can study, understand basic legal terminology, and improve their communication skills in Spanish. The cost is \$10 plus shipping (\$3.95). Contact TMCEC to order [info@tmcec.com or (800) 252-3718].



TEXAS MUNICIPAL COURTS ASSOCIATION 2014 ANNUAL CONFERENCE

KERRVILLE, TEXAS
JULY 17-19, 2014

Save the Date - Save the Date - Save the Date - Save the Date - Save the Date - Save the Date

- *ALL NEW* Speakers and Topics! Plus Useful Tips and Resources!
- *NEW* Organized Group Activities for You and Your Guests!
- Room Rate at the Newly Renovated Inn of the Hills Resort & Conference Center - \$99 single/double includes Daily Breakfast, Wi-Fi, and Parking.
- *FREE* MCLE credit for Attorney Judges & Prosecutors. A \$100 Value!
- SBOT CLE Applies to College of the State Bar and Board of Legal Specialization in Criminal Appellate Law, Criminal Law & Juvenile Law.
- Satisfies Annual Level I, II and III Continuing Clerk Certification Hours.
- Video Technology, Collections, Court Security, Case Management Software, Electronic Citations, and Imaging Vendors on Hand.
- TMCA is a TMCEC Approved Judicial Education Credit Hours Provider!
- Call (800) 292-5690 to Reserve a Room at the Inn of the Hills Resort & Conference Center. This Special TMCA Room Rate Cannot Be Guaranteed after June 16th, 2014. Rooms at this Rate Limited. So Call Today!!
- Be Sure to Request a *Newly Renovated* Hotel Room when making your Reservation.
- Look for Registration Forms and Agenda Online at www.txmca.com in late January!
- Questions? Contact Hon. Sharon Hatten, TMCA Annual Meeting Chair, at (432) 685-7300 or shatten@midlandtexas.gov for further information.

TEXAS MUNICIPAL COURTS ASSOCIATION
and
TEXAS MUNICIPAL COURTS EDUCATION CENTER



RIBBON CUTTING CEREMONY



January 24, 2014
1 p.m.

Join us for a ribbon cutting
ceremony of our new building



2210 Hancock Drive –Austin, Texas 78756

**RSVP
(512) 320-8274**



RESOURCES FOR YOUR COURT

Annual Report: State Commission on Judicial Conduct

The State Commission on Judicial Conduct has released its 2013 Annual Report, which provides statistical information on the number of violations of the Code of Judicial Conduct filed, investigated, and disposed of. On page 13 of this journal is an excerpt from this publication showing examples of improper judicial conduct. Although municipal judges comprise the greatest in number of any type of judge in Texas (1,575 judges, 40%), only seven percent of the cases filed were for the municipal judiciary. The entire report may be accessed at www.scjc.state.tx.us.

OCA Annual Report

The Office of Court Administration and Texas Judicial Council have released the *2013 Annual Statistical Report* for the Texas Judiciary, which provides synopses and highlights of court activity. Excerpts from the *Annual Report* about municipal courts are reprinted in this issue of *The Recorder*. The entire report may be downloaded from www.courts.state.tx.us/pubs/AR2012/toc.htm, or our website. Also, on the OCA website, readers may find the statistical reports of the municipal courts by alphabetically by city or numerically by population size. The report also includes a summary of juvenile or minor activity by city.

Profiles of Municipal & Justice Courts

	<u>Justice Courts</u>	<u>Municipal Courts</u>
Number of Judges		
Number of Judge Positions	817	1,586
Age of Judges		
Mean	58	61
Oldest	88	95
Youngest	28	26
Gender of Judges		
Males	520	1,019
Females	296	533
Length of Service		
Average	10 Yr. 9 Mo.	9 Yr. 5 Mo.
Longest	50 Yr. 5 Mo.	46 Yr. 10 Mo.
First Assumed Office By		
Appointment	218 (27%)	1541 (99%)
Election	597 (73%)	20 (1%)
College Graduated	246 (32%)	879 (59%)
Law School Graduated	65 (9%)	879 (59%)

Excerpt from *FY13 Annual Report of Office of Court Administration*.

Interested in Starting a Teen Court?

TMCEC is offering a teen court planning session on March 24-25, 2014 in Georgetown. If you are interested in attending, please contact Hope Lochridge at TMCEC (hope@tmcec.com). The seminar is designed for those who do not yet have a teen court in place, but if space is available, those with existing teen courts will be admitted. There is no registration fee and travel/housing funds are available. Judges, clerks, community leaders, juvenile case managers, and city officials are eligible to attend. Funding from TxDOT will provide travel, housing, and per diem expenses.

FROM THE CENTER

2014 Spring Webinars

Presented by the Texas Municipal Courts Education Center

January 23: TMCEC Radio: Morning Coffee – *The Recorder* Issue
Presented by the TMCEC Attorneys
Tune in **this Thursday** for a discussion of the latest issues from this edition of *The Recorder*, including the Michael Morton Act and the recently issued, highly anticipated Attorney General Opinion GA-1035, Re: Confidentiality of records in juvenile misdemeanor cases.

February 6: Protective Order Reporting
Presented by Kim Piechowiak, Domestic Violence Resource Attorney, Office of Court Administration

February 20: The Parks & Wildlife Code and Boater Safety Courses
Presenter TBD

March 6: Child Safety Seat Laws
Presented by Lynda Walker, Certified Child Passenger Safety Technician, Law Enforcement Liaison, TMPA

March 20: Pro Se Defendants
Presenter TBD

April 10: TMCEC Radio: Morning Coffee
Presented by the TMCEC Attorneys

April 24: Commercial Motor Vehicles
Presenter TBD

May 1: *State v. Cooper*
Presented by Ryan Turner, TMCEC

May 22: Noise
Presenter TBD

About Webinars

Webinar participation is open to all municipal judges, clerks, court administrators, prosecutors, bailiffs, warrant officers, juvenile case managers, and court interpreters.

All webinars begin at 10:00 a.m. and last approximately one hour. Webinar participation counts for one hour of credit toward the clerk certification program. Webinars noted with a label on the Online Learning Center (OLC) count for one hour of judicial credit (red label) and many will be submitted for MCLE credit from the State Bar for licensed attorneys (yellow label).

2013 Webinars On Demand

October 3: TMCEC Radio: Morning Coffee, Legislative Blend (Topics include discovery requirements under Article 39.14, C.C.P., Truancy Prevention and Diversion Fund, and the effect of “named-driver policies” on proof of financial responsibility for DSC and FMFR dismissals)
Presented by the TMCEC Attorneys

October 17: Immunity: So You Think You Can’t Be Sued?
Presented by Katie Tefft, Assistant City Attorney, City of Houston

November 14: TMCEC Radio: Morning Coffee (Topics include the limits of judicial and magistrate duties at the jail, driver safety courses, nuisance jurisdiction, and Chapter 37, Subchapter E-1 of the Education Code)
Presented by the TMCEC Attorneys

December 5: Passing the Paddle Back: The Classroom to Courtroom Pipeline after the 83rd Texas Legislature
Presented by Ryan Turner, General Counsel & Director of Education, TMCEC (1.5 hours)

January 9: Judicial Ethics Update (Spring 2014 Webinar Series)
Presented by Seana Willing, Executive Director, State Commission on Judicial Conduct

For more information on webinars, visit our webpage at <http://tmcec.com/programs/webinars/> or the OLC at <http://online.tmcec.com>.

2014 Municipal Traffic Safety Initiatives Conference

Coming April 2014, TMCEC is excited to offer a three-day Municipal Traffic Safety Initiatives Conference with funding from the Texas Department of Transportation (TxDOT). The conference is open for judges, clerks, juvenile case managers, and prosecutors to attend.

This year we venture into the future of traffic safety. What better place to do that than near the NASA Johnson Space Center! This year's pre-conference session, Focus on Reducing Impaired Driving Among Youth, presented by the Texas Municipal Police Association, includes hands-on Fake ID recognition with black lights! The general session includes a session on technology and a panel of teen drivers. New breakout sessions include Specialty Courts, Proving a DUI Case, and Grant Writing.

TMCEC is again sponsoring the Municipal Traffic Safety Initiative Awards. The registration fee is \$50. Enrollment is limited to 150 participants. Register today! Free CLE for licensed attorneys!

For more information, visit <http://tmcec.com/mtsi/2014-traffic-safety-conference>.

Hilton NASA Clear Lake
Houston
April 2-4, 2014



Funded by grants from the Texas Court of Criminal Appeals and the Texas Department of Transportation

UPCOMING PROGRAMS

2013 - 2014 TMCEC Academic Schedule At-A-Glance

Seminar	Date(s)	City
Regional Clerks Seminar (wait list)	February 10-11, 2014 (M-T)	Addison
Regional Judges Seminar	February 10-12, 2014 (M-T-W)	Addison
Regional Clerks Seminar II	February 13, 2014 (Th)	Addison
Regional Judges Seminar (wait list)	February 23-25, 2014 (Su-M-T)	Galveston
Regional Clerks Seminar	March 3-4, 2014 (M-T)	Houston
Regional Judges Seminar	March 3-5, 2014 (M-T-W)	Houston
New Judges & Clerks Orientation	March 19, 2014 (W)	Austin
Prosecutors Seminar	March 24-26, 2014 (M-T-W)	San Marcos
Traffic Safety Conference	April 2-4, 2014 (W-Th-F)	Houston
Regional Clerks Seminar	April 14-15, 2014 (M-T)	Lubbock
Regional Judges Seminar	April 14-16, 2014 (M-T-W)	Lubbock
Regional Clerks Seminar*	April 28-30, 2014 (Su-M-T)	S. Padre Island
Regional Attorney Judges Seminar	May 4-6, 2014 (Su-M-T)	S. Padre Island
Regional Non-Attorney Judges Seminar	May 6-8, 2014 (T-W-Th)	S. Padre Island
New Judges & Clerks Orientation	May 14, 2014 (W)	Austin
Bailiffs and Warrant Officers Seminar	May 18-20, 2014 (Su-M-T)	San Antonio
Regional Clerks Seminar	June 9-10, 2014 (M-T)	El Paso
Regional Judges Seminar	June 9-11, 2014 (M-T-W)	El Paso
Prosecutors & Court Administrators Seminar	June 23-25, 2014 (M-T-W)	Houston
Juvenile Case Managers Seminar	July 7-9, 2014 (M-T-W)	Austin

**TEXAS MUNICIPAL COURTS EDUCATION CENTER
FY14 REGISTRATION FORM:**

Regional Judges Seminar

Conference Date: _____ Conference Site: _____

Check one:

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

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: _____ Years experience: _____
Emergency contact: _____ DOB: _____

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**. 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: _____

I certify that I am currently serving as a municipal judge or court support personnel in the State of Texas. I agree that I will be responsible for any costs incurred if

I plan to attend the following sessions in their entirety:

- Day 1: Pre-Conference, 1 p.m. – 5 p.m. (4 hours)**

(In Tyler and South Padre Attorney judges seminars, the pre-conference will be a post-conference and will be on Day 3, 1 p.m.-5 p.m.)

- Day 2: Seminar, 8 a.m. – 5 p.m. (8 hours)**

- Day 3: Seminar, 8 a.m. – Noon (4 hours)**

***I understand that if I do not attend Day 3 in its entirety, then I am not allowed a hotel room at grant expense on the evening of Day 2.**

Judges (living or working 30+ miles from hotel) are allowed a double room at the hotel at grant expense on the evening of Day 1.

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

Participant Signature (may only be signed by participant)

Date

PAYMENT INFORMATION: Payment **will not** be processed until all pertinent information on this form is complete.

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

- 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: _____

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

**TEXAS MUNICIPAL COURTS EDUCATION CENTER
FY14 REGISTRATION FORM:**

Regional Clerks Seminars

Note: Please use other registration forms for Court Administrators Conference

Conference Date: _____ Conference Site: _____

Clerk/Court Administrator (\$50) for Regional Seminar

Name (please print legibly): Last Name: _____ First Name: _____ MI: _____
Names you prefer to be called (if different): _____ Female/Male: _____
Position held: _____
Date Hired: _____ Years experience: _____
Emergency contact and phone 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 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 for one night only). 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 a 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: _____

STATUS (Check **all** that apply):

- Full Time Part Time Court Clerk/Deputy Clerk Juvenile Case Manager
 Court Administrator Other _____

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

Participant Signature (may only be signed by participant)

Date

PAYMENT INFORMATION: Payment **will not** be processed until all pertinent information on this form is complete.

Amount Enclosed: \$ _____ = **Registration Fee:** \$ 50 + **Housing Fee:** \$ _____

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

Credit Card Payment:

Credit card type: Amount to Charge: Credit Card Number Expiration Date
\$ _____

MasterCard

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

Authorized signature: _____

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

**TEXAS MUNICIPAL COURTS EDUCATION CENTER
FY14 REGISTRATION FORM:**

Court Administrators, Bailiffs & Warrant Officers, Level III Assessment Clinic, and Traffic Safety Conferences

Conference Date: _____ Conference Site: _____

Check one:

- Traffic Safety Conference - Judges & Clerks (\$50)
- Level III Assessment Clinic (\$100)
- Court Administrators Seminar (\$100)
- Bailiff/Warrant Officer* (\$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: _____ Years experience: _____
Emergency contact: _____ DOB: _____

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, Bailiff/Warrant Officer seminar, Level III Assessment Clinic, the Court Administrators conference and the Traffic Safety Conference. 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: _____

STATUS (Check all that apply):

- Full Time Part Time Attorney Non-Attorney Mayor/Judge Bailiff/Warrant Officer
- Presiding Judge Justice of the Peace Other _____
- Associate/Alternate Judge Mayor (*ex officio* Judge)

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

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

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

Participant Signature (may only be signed by participant)

Date

PAYMENT INFORMATION: Payment **will not** be processed until all pertinent information on this form is complete.

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

- 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: _____

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

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.



Municipal Courts Week continued from pg. 2

Municipal Courts Week serves a dual purpose: it is a chance for courts, city councils, and communities throughout Texas to show their appreciation for the dedicated municipal judges, court clerks, court administrators, prosecutors, bailiffs, warrant officers, and other court personnel who comprise the Texas municipal courts; and an opportunity for the municipal courts to share with the public the important role that local courts and their personnel play in the criminal justice system and the larger community. The activities in many cities highlighted this dual purpose. For example, in Sulphur Springs, Municipal Courts Week was celebrated through both interaction with the public and rewards for the staff. "I set up an exhibit in the lobby with handouts on traffic safety provided by the Center, which included games, colors, and coloring books for children, stickers, and bumper decals for young drivers and information regarding court procedures for adults and juveniles," said Phyllis Rogers, Presiding Judge, Sulphur Springs Municipal Court. "I provided breakfast items for the city staff meeting on Wednesday and treated the court staff to lunch on Thursday."

For more information on what other cities did to celebrate, go to http://www.tmcec.com/resources/more-resources/municipal_courts_week/.

Municipal Courts Week 2013 – Participating Courts

- | | | |
|---------------------|-------------------------|------------------------|
| 1. Alice | 35. Ferris | 68. Poth |
| 2. Alvord | 36. Florence | 69. Ranger |
| 3. Andrews | 37. Flower Mound | 70. Red Oak |
| 4. Argyle | 38. Forest Hill | 71. Reno |
| 5. Arlington | 39. Friendswood | 72. Richardson |
| 6. Austin | 40. Garland | 73. Roanoke |
| 7. Balcones Heights | 41. Georgetown | 74. Rockwall |
| 8. Bastrop | 42. Glenn Heights | 75. Round Rock |
| 9. Baytown | 43. Granbury | 76. Royse City |
| 10. Beaumont | 44. Gun Barrel City | 77. San Antonio |
| 11. Bee Cave | 45. Hackberry | 78. San Marcos |
| 12. Bellmead | 46. Hickory Creek | 79. Schertz |
| 13. Bevil Oaks | 47. Hollywood Park | 80. Seabrook |
| 14. Boerne | 48. Houston | 81. Seguin |
| 15. Brenham | 49. Hurst | 82. Shady Shores |
| 16. Brownfield | 50. Jefferson | 83. Silsbee |
| 17. Brownsville | 51. La Porte | 84. Smithville |
| 18. Bryan | 52. Lake Dallas | 85. South Padre Island |
| 19. Burleson | 53. Lakeway | 86. Southlake |
| 20. Carrizo Springs | 54. Leander | 87. Stamford |
| 21. Cedar Hill | 55. Liberty | 88. Sugar Land |
| 22. College Station | 56. Linden | 89. Sulphur Springs |
| 23. Columbus | 57. Little Elm | 90. Tahoka |
| 24. Commerce | 58. Mansfield | 91. Temple |
| 25. Coppell | 59. Manvel | 92. Texarkana |
| 26. Copper Canyon | 60. McAllen | 93. Tom Bean |
| 27. Covington | 61. Mission | 94. Universal City |
| 28. Crowley | 62. Moulton | 95. Uvalde |
| 29. Cuero | 63. Nacogdoches | 96. Vernon |
| 30. Denison | 64. New Braunfels | 97. Victoria |
| 31. Double Oak | 65. Pearland | 98. Webster |
| 32. Driscoll | 66. Piney Point Village | 99. Windcrest |
| 33. Dublin | 67. Portland | 100. Wylie |