

# The *R*ecorder

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## The Role of the Municipal Court in City Government, or Municipal Judges are from Mars, City Officials are from Venus

By Lauren Crawford, Legal Counsel  
Texas Municipal League

Sometimes it can feel like municipal judges and city officials come from completely different planets. In this article, we will take a light-hearted, example-based approach to a very real question: what comprises appropriate or inappropriate actions on the part of the governing body, city staff, and municipal judge? The Texas Code of Judicial Conduct, which applies to all municipal judges in Texas, can help clarify many of these issues. The hypothetical situations given here are exaggerated,

but the ethical considerations are practical. All of the canons referenced in this article may be found in the Code of Judicial Conduct, and on the websites of the Office of Court Administration, and of the State Commission on Judicial Conduct.

[www.courts.state.tx.us/judethics/canons.asp](http://www.courts.state.tx.us/judethics/canons.asp)  
[www.scjc.tx.us](http://www.scjc.tx.us)

### City Officials, Here are Six Ways to Drive Your Municipal Judge Crazy:

If it is budget time, send your judge the following memo: "The budget is really tight this year. Hardly anyone in court showed up with a lawyer last year. The bills from the city attorney for prosecuting in municipal court are killing us. Why not hold court without the prosecutor unless the defendant has a lawyer?"

*continues on page 8*

## Armed But Not Dangerous: Obtaining a Concealed Handgun License

By Ray Oujesky, Municipal Judge  
North Richland Hills

Before seeking approval for a Concealed Handgun License (CHL), there are several things to consider. Having successfully completed the process, I hope this article will provide assistance to others considering licensure.

### The Application Process

The application for a CHL must be obtained from the Concealed Handgun Licensing Section of the Texas Department of Public Safety, [www.txdps.state.tx.us](http://www.txdps.state.tx.us). You can also obtain the application by mailing a request to the CHL Section, P.O. Box 4143, Austin, TX 78765-4143 or by calling the CHL Section Helpline at (800) 224-5744.

Upon entering the DPS website, find the *Concealed Handgun* link under *Top 10 DPS Links*. This link will take you to the *Regulatory Licensing Service Concealed Handgun Licensing* page. Find the link for *Apply for a Concealed Handgun License or Instructor Certificate* link. This will take you to the *Concealed Handgun Licensing* page, which will give you preliminary information about the application process. Have ready your social security number, a Texas driver's license or ID card, and a valid credit card. You also must be at least 21 years old.

The *Continue* link takes you to the *Welcome* page where you will provide

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# AROUND THE STATE

## Traffic Safety Awards

TMCEC is pleased to announce the 2008 winners of the Traffic Safety Awards. The purpose of this program, funded by a grant from the Texas Department of Transportation, is to recognize those who work in cities that have made outstanding contributions to their community in efforts to increase traffic safety. The award winners will be recognized at the Traffic Safety Conference to be held May 21-23, 2008 in Irving at the Omni Mandalay Hotel.

High Volume Courts: El Paso and Irving

Mid-Size Courts: Bryan, Georgetown, and New Braunfels

Low Volume Courts: Bastrop, Colleyville, Lakeway, Lockhart, and Shenandoah

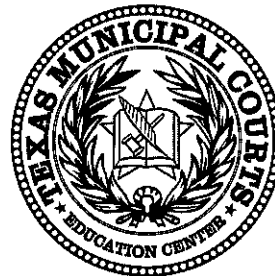
Future issues of *The Recorder* will include an article on the activities of these award winners.

## New Staff at TMCEC

TMCEC welcomes Mark Goodner to the TMCEC staff as the Program Attorney responsible for the bailiff/warrant officer and court interpreter programs, as well as the TMCEC web site. Mark is a recent graduate of the University of Texas Law School in Austin. He completed his B.A in Theater at Oklahoma State University. He taught middle and high school in Atascocita and Channelview, Texas.

Meichihko Proctor, TMCEC Program Attorney & Deputy Counsel, left TMCEC in early April to become an Assistant Attorney General in the Public Information Coordinator's Office of the A.G.'s Office in Austin. She plans to continue to teach at TMCEC seminars, so although we will miss her many contributions to the TMCEC program, we are glad that we will see her regularly. If you have questions about Rule 12 or PIA issues, please contact her: 512/475-4558.

The position of Program Attorney and Deputy Counsel is posted in the TMCEC website. Experiences municipal judges and city attorneys are encouraged to apply. Interviews will be conducted in May-June.



**Note:** To conserve grant funds, only one copy of *The Recorder* is now sent at no charge to municipal courts. Email TMCEC if you wish to receive a digital copy by email (tmcec@tmcec.com).

# FROM THE GENERAL COUNSEL

Ryan Kellus Turner

## By Hook or Crook: I Maintain that Everything is Fine

If, by some chance, you have not heard the tale of James Crook and the recent plurality opinion from the Texas Court of Criminal Appeals that has apparently struck fear in the heart of many local government "bean counters," allow me to recap.

Crook was charged by a single indictment and convicted of 13 counts of barratry (Section 38.12, Penal Code). The judge, over the objection of the prosecution, placed the defendant on probation on each count, with the periods of probation to run concurrently, and ordered the \$10,000 fine for each count to run concurrently instead of consecutively. The Eighth Court of Appeals in El Paso affirmed the sentence.

The prosecution challenged the judgment on the basis of case law, arguing that the defendant's fines should have run consecutively.

Four of the nine members of the Court of Criminal Appeals rejected such argument holding that the concurrent sentences provision of Section 3.03(a), Penal Code, either predated Section 3.03(a) or relied on cases decided prior to its adoption. Such cases, the plurality concluded, provided little guidance on whether the concurrent sentences provision of Section 3.03(a) applied to fines. Thus, the concurrent sentences provision of Section 3.03(a) applied to the entire sentence, including fines. The judgment was affirmed.

The plurality opinion and two dissents were both handed down on February 6, 2008. On February 11, TMCEC received so many telephone calls and e-mails from panicked city officials that we responded by posting a comment on our new and improved website. In a "Note from

the General Counsel regarding *State v. Crook*, PD-0001-07" (see, [www.tmcec.com](http://www.tmcec.com) for the document in its entirety), I urged judges to read the entire decision and made the following observations:

1. *Crook* involved multiple counts of a single felony (one cause number, one case), not separate cases alleged in separate charging instruments, and not using the specific charging instrument of municipal and justice courts, the complaint.
2. While at first glance *Crook* may appear to be a 5-4 decision, look closer. This is really a 4-1-4 decision. Judge Keller did not join the plurality opinion. Rather, she concurred in the judgment. Thus, it must be emphasized that this case should not be cited or accepted as controlling authority for any particular legal proposition.
3. The only part of the *Crook* decision that was widely quoted by the media is Judge Cochran's sharp dissent. Please note that this dissent, while eloquent and direct, contains no cited authority and is not controlling authority. When you read the two dissenting opinions (the other by Judge Holcomb), I believe that you will find that it is only by means of cascading implication that any part of the instant case is applicable to cases involving seat belt violators and speeders.
4. Is the implication of Judge Cochran's dissent a possibility?

Yes, however, I believe this would only occur in the rarest of cases where a single complaint contains multiple counts alleging that each count is part of a continuing "criminal episode" as defined in Section 3.01, Penal Code. While Article 21.24 of the Code of Criminal Procedure contemplates this possibility, the reality of charging practices in municipal and justice courts suggest it to be unlikely. Our charging instrument as defined in Article 45.018, C.C.P., is more akin to a single-shot shotgun: one offense, one complaint.

There is no denying that on the day I wrote the preceding comments I was trying to calm people down. Seriously, we had folks wanting the Governor to call a special session! Two months later I am still comfortable with my original observations. However, upon reflection, and some collegial debate, I do have some additional observations I'd like to share:

1. The Court of Criminal Appeals was ruling on a specific case that consisted of specific facts. Even if you don't agree with the plurality opinion, it seems to me that people upset by the opinion written by Judge Hervey are assuming that she, Judge Meyers, Judge Price, and Judge Keasler would transpose all of their reasoning in *Crook* onto cases involving citations, Class C misdemeanors, and cases adjudicated pursuant to Chapter 45 of the Code of Criminal Procedure. That

is a presumption, I am not willing to make. (See my first and fourth observation, in the preceding paragraph.) While I understand why many of you do not agree with the plurality's analysis of Section 3.03, Penal Code, out of all fairness to its authors, it is inappropriate to read things into the plurality's opinion that are not expressly stated.

2. City attorneys and judges (not to mention, finance directors) have asked TMCEC to cite authority for the proposition that plurality opinions of the Court of Criminal Appeals are not binding precedent. See, *State v. Hardy*, 963 S.W.2d 516 (Tex.Crim.App. 1997). The U.S. Supreme Court similarly construes its own plurality opinions as not binding precedent but rather "a point of reference for further discussion of the issue." *Brown v. Texas*, 460 U.S. 730, 737 (1983).
3. While I am persuaded by Judge Holcomb's dissent (joined by Judge Johnson) disputing the plurality opinion's construction of 3.03, Penal Code, and its predecessor, I went back and reexamined how this dissent relies on *Ex parte Minjares*, 582 S.W.2d 105 (Tex.Cr.App. 1978). Reliance on *Minjares*, a case which hopefully every municipal judge and justice of the peace in Texas have read, dealing with *capias pro fines* and concurrent and consecutive commitment orders, appears to be the source of the "cascading implications." See my third observation, in the preceding paragraph. I am surprised that no member of the plurality pointed out that unlike the facts in *Crook* involving a

single judgment with multiple counts, *Minjares* involved "many judgments" 582 S.W.2d at 107. Likely, there were nine judgments to be exact, as the Court states that "the petitioner was convicted in the Municipal Court of El Paso on nine traffic complaints." *Id.* at 108. Subsequently, upon default the municipal court in *Minjares* prepared one singular commitment order reflecting the sum of all judgments.

4. Judge Cochran's dissent (joined by Judge Womack), like Judge Holcomb's, is very logical and persuasive. "Time runs; money is paid. A term of imprisonment runs for a period of time; a fine is paid, either immediately or over a period of time. One term of imprisonment may run concurrently with another term of imprisonment. One fine cannot 'run' concurrently with another fine." What is subsequently stated, however, is either intended to draw attention far and wide to the *Crook* decision (mission accomplished) or a concession to the plurality (doubtful). Another possibility is that Judge Cochran believed that Judge Keller had joined the plurality (which she did not). (See my second observation, in the preceding paragraph.) Regardless of intent, it is worth restating the source of the recent hoopla. "Before today, all fines could be paid at the same time, i.e., concurrently, but each fine had to be paid. Never before has a \$200 fine for speeding 'run' with a \$100 fine for simultaneously failing to wear a seat belt. One has never before paid the fine for the single most expensive traffic ticket violation and let

all the others ride free. But a new day has dawned. Traffic-ticket scofflaws may rejoice."

**Concession or Rhetorical Pyrotechnic Device?** - Someone said, it is always better to go out with a bang than a whimper. While I understand how one could construe the "a new day has dawned" rhetoric as a concession of sorts, I am not convinced because my ears are still ringing. Judge Cochran's dissent in exactly 73 words got the attention of hundreds of local governments, the media, and brought about an unprecedented deluge of communication directed toward TMCEC.

**Meet the Press!!** - In the wake of the attention from the *Crook* decision, I honestly believed after our posting the "Note" on the website and sending it out on the TMCEC listservs that there would be no need to write any more about the decision. My fear was that by belaboring the issue, that TMCEC would inadvertently rekindle the flames when in reality *Crook* is more smoke than fire when it comes to municipal and justice courts. Then, on February 15, 2008, the Valley Morning Star in Brownsville reported:

"A Texas Court of Criminal Appeals opinion that court fines cannot be 'stacked' like jail sentences will pertain to *all* cases, even traffic ticket fines, a local prosecutor said. The ruling could affect the case of a Harlingen woman who was recently found to have 76 outstanding traffic warrants and more than \$18,000 in unpaid fines." (emphasis added)

On February 21, 2008, the Texas Municipal League in its TML Legislative Update reported, "A recent decision by Texas' highest criminal court, the Court of Criminal Appeals, *will* affect certain municipal court actions involving more than one charge against a defendant" (emphasis added)

In respectfully disagreeing with the jest of these and similar articles, please allow me to reiterate what I originally wrote on February 11. To extrapolate the plurality opinion's impact on municipal and justice courts, in my opinion, ignores much of the differing mechanics that differ between (1) felony and misdemeanors, and (2) A & B misdemeanors and Class C misdemeanors. These are issues that simply were not addressed by any members of the Court. Nor was the Court obliged to address these issues. Remember, this was a case involving a fine stemming from an indictment and conviction for a Third Degree felony, not a Class C misdemeanor conviction pursuant to the filing of a complaint.

As of date, only one appellate court has cited *Crook*. On February 13, 2008 in an unpublished opinion, the Third Court of Appeals in Austin cited *Crook* for the proposition that "whether multiple sentences run concurrently or consecutively is a matter to the trial court's discretion." *Kincheon v. State*, 2008 Tex. App. LEXIS 1130 (Tex. App. 2008)

**The End is Just the Beginning of Something Else** - On February 19, 2008 the State Prosecuting Attorney (SPA), Jeff Van Horn, petitioned the Court for rehearing. From what I understand, in

the event that rehearing is granted it is unlikely that the case will be reset for submissions. Accordingly, now is the time to file amicus letters/briefs with the Court of Criminal Appeals. There is really no telling how long the Court will take before it rules on the SPA's motion. It is likely that by the time you read this, the Court will have ruled. If the motion for rehearing is granted, the Court typically proceeds immediately to hand down a new opinion. If the motion is denied, then the *Crook* opinion remains (despite what you may have read elsewhere) a 4-1-4 plurality.

If the sentiment of the plurality becomes a majority opinion, I am not convinced, in light of charging practices in misdemeanor prosecutions (especially in municipal and justice court) that the impact will be all that significant. The same may not, however, be true in criminal cases prosecuted in district court (cases where multiple count indictments are often utilized).

There is no telling where *Crook*, merely by implication, may take us in terms of discussing accepted prosecutorial practices. I know that many of you are debating what constitutes a "criminal episode" in the context of common Class C misdemeanors. Let me know when you find some case law on point.

I do understand how such debates could change common prosecution practices for certain types of ordinances offenses. Personally, I would like to know how a "transaction" can be part of a "scheme or plan" when some of the offenses adjudicated in municipal and justice court do not require proof of any culpable mental state? I am happy to engage in such discussions, but I am not willing to agree that *Crook* implies any answers.



## ABA Traffic Court Seminar

The ABA Judicial Division is offering its Traffic Court Seminar on October 14-17, 2008 in New Orleans at the Royal Sonesta Hotel. Registration costs vary from \$549 (before August 15<sup>th</sup> for ABA Judicial Division Members) to \$649 for non-members after August 15<sup>th</sup>.

Courses at the seminar will include *Arrest, Detention, Search and Seizure Law Related to Traffic Stops, How to Deal with the Media Ethically and Still Win, Interlock Devices and PBTs, DUI and Drug Courts, Judicial Outreach, Traffic Court Best Practices, Granddrivers, and Foreign Drivers License/Immigration/Interpreters/NAFTA issues*. Credit for CLE has been submitted to the State Bar of Texas. The seminar is approved by the Municipal Courts Education Committee towards credit toward the annual mandatory judicial education requirement for municipal judges.

For more information or to become a member of the ABA Judicial Division, contact 800/285-2221 or [www.abanet.org/jd](http://www.abanet.org/jd).

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information that will first determine if you are eligible for a CHL. If you are determined to be eligible by answering the 14 preliminary questions about your criminal history, chemical dependency, mental state, and so on, you can continue to the *Login / Apply for a new Concealed Handgun License* page where you will enter your driver's license or ID number and your social security number to continue.

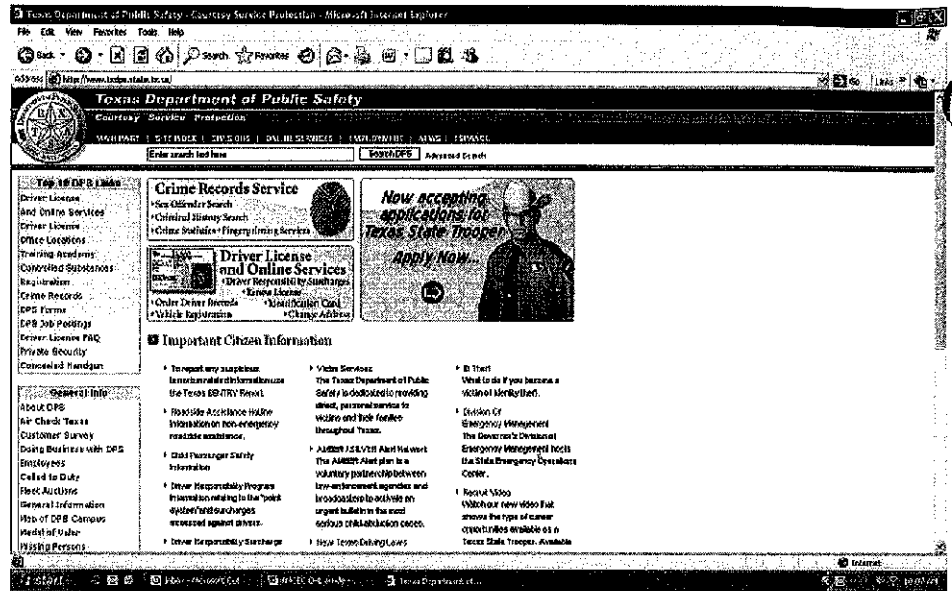
From this point, you will provide personal information, contact information, residence history, employment history, and self reported history such as any confinement in chemical dependency or psychiatric facilities. You will confirm the information given and then pay a nonrefundable application fee of \$25. At this point, you have completed the initial application process.

Within a few weeks, you will receive, by mail, several documents from DPS. These documents must be completed and returned to DPS.

The *State of Texas Application for a License to Carry a Concealed Handgun* will contain the information you provided online. You will verify that the information contained on the form is correct.

In the next document, the *Knowledge of Laws Affidavit*, you must verify that you have read and understand each provision of Chapter 411, Subchapter H, of the Texas Government Code, which contains laws for carrying a concealed handgun, Chapter 9 of the Penal Code as it relates to the use of deadly force by a citizen, and Section 46.035 of the Texas Penal Code regarding the unlawful carrying of a handgun by a license holder.

Another document is the *Authorization for Release of Records*, which allows the State to obtain your medical records



concerning chemical dependency and mental health, child support obligations, payment status of taxes, juvenile proceedings, law enforcement records, payment status of student loans, and protective orders.

The final document is the *Eligibility Affidavit* which is used to verify that you have fulfilled all of the eligibility requirements listed under Chapter 6, Section 37 of the Texas Administrative Code and Chapter 411 of the Texas Government Code.

You will also receive instructions on the submission of passport photos and fingerprints which must be submitted to DPS along with the above-referenced documents.

### The Certification Process

As active judicial officers, municipal judges are exempt from the standard requirements of certification in the use of handguns. Most applicants must complete a course of instruction taught by a Qualified Handgun Instructor certified by DPS. Active judicial officers are only required to submit an affidavit from a Texas Commission on Law Enforcement Officers Standards and Education (TCLEOSE) Certified Law

Enforcement Firearms Instructor that the applicant is proficient in the use of a handgun. I created an affidavit, a copy of which is on page 7, to use for this purpose.

The TCLEOSE certified instructor who certified my proficiency was employed by the city I preside over as a deputy marshal. Many cities have one or more similarly qualified instructors who are employees to assist in the re-certification of their own peace officers.

The CHL laws provide no guidance on what constitutes proficiency in the use of a handgun. Therefore, the instructor and I met at a local shooting range and went through a one day training program similar to the TCLEOSE program used to re-certify a peace officer. The training included body position; stance and handgun grip; site alignment and breathing while preparing to fire a handgun; identification, inspection, and loading of ammunition into the handgun magazine; proper release and reload of handgun magazine; operation of handgun safety mechanism, proper racking of ammunition into handgun firing of handgun at scored target from 3, 7, and 15 yards; proper handling of misfired or jammed handgun; proper

concealment and holstering of handgun and proper dismantling, cleaning, and storage of handgun. Prior to the training program, I was inexperienced in most all of these procedures. With proper training, even an inexperienced person can show proficiency to the extent that an instructor will be able to certify that you are proficient in the use of a handgun.

I received my CHL approximately 60 days after submission of the application package. No supplementation of my application was required. While tedious, except for the lack of defined criteria exhibiting proficiency in the use of a handgun, obtaining your CHL in your capacity as a municipal judge is simpler than the process for the general public.

State of Texas §  
County of \_\_\_\_\_ §

My name is \_\_\_\_\_ (name) I am a Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) certified Law Enforcement Firearms Instructor and Advanced Certified Peace Officer whose commission is current and up-to-date. On \_\_\_\_\_ (date), I met with the Applicant, \_\_\_\_\_ (name), to instruct him/her in the proper use of a semi-automatic handgun and to determine if he/she was proficient in the use of a semi-automatic handgun. Range instruction consisted of the following using a \_\_\_\_\_ (type of gun) handgun: body position, stance and handgun grip, site alignment and breathing, handgun nomenclature, identification, loading and proper inspection of ammunition before loading into handgun magazine, proper release and reload of handgun magazine, operation of safety (de-cock), and slide release. Applicant skill assessed while firing of handgun at scored target as a timed course of fire consistent with TCLEOSE rules for law enforcement firearms training. Applicant scored above 70% after firing 50 rounds from the 3, 7, and 15 yard line. Applicant was instructed on proper holstering of the handgun, proper handling of misfired or jammed handgun, and proper clearing of misfed rounds (Tap and Rack), proper concealment of handgun in a public place, and applicable laws in the carrying of concealed weapons. He/she was instructed on how to safely dismantle and clean a handgun, and on proper storage.

The Applicant demonstrated proficiency in the use of the \_\_\_\_\_ (type of gun) \_\_\_\_\_ handgun. I recommend the Applicant, \_\_\_\_\_ (name), for approval of a Concealed Handgun License.

\_\_\_\_\_  
(signature)  
\_\_\_\_\_  
(name) TCLEOSE Certified Law Enforcement Firearms Instructor

SUBSCRIBED and SWORN TO before me, this \_\_\_\_\_ day of \_\_\_\_\_ (date), 2008.

(seal)

NOTARY PUBLIC STATE OF TEXAS

## Clerks Certification Update

Effective September 1, 2008, a passing score on the clerks certification exams expire after three years. Thus to be certified at any given level, you must have completed your training requirements, passed the exam, and filed your application within a 36 month period. This is not a new rule, but a rule clarification.

Also, the book list for Level III will change September 1, 2008. The new book is entitled the *Texas Municipal Courts Financial Management Handbook*, a publication of the Texas Court Clerks Association. It will replace *Court Management Library Series: Trial Court Budgeting* and *Internal Control of Court-collected Funds*.

CALI-LAW lessons are being developed to help clerks study for the Level III certification exam. Watch the TMCEC web sites for access.

The TCCA Education Committee and TMCEC are both proud to release the latest numbers of clerks certified and active in the program:

Level I: 592

Level II: 244

Level III: 33

Those certified are reminded of the 12 hours of annual training that is required to maintain certification at Levels I & II (20 hours for Level III). A renewal form must be sent into TMCEC no later than August 31, 2008. A copy is found at [www.tmcec.com](http://www.tmcec.com)

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In a similar situation, two criminal complaints for disorderly conduct were filed in court. The judge went forward with a pretrial hearing and trial, found the defendant guilty, and assessed a fine. No prosecutor was involved. In addition, the defendant was never advised of her rights and never entered a plea. The Texas Commission on Judicial Conduct found that the judge, in failing to involve a prosecutor, failed to comply with the law and also demonstrated lack of competence in the law, in violation of Canons 2A and 3B(2) of the Code of Judicial Conduct. Similarly, when a police officer was charged with assault, a municipal judge summoned witnesses to her office, outside the presence of a prosecutor or defense attorney, to "gather information pertaining to the allegations." The judge eventually found the officer guilty and sent a certified letter requesting \$250 for the fine, all without involving a prosecutor. The Commission held that this also constituted evidence of failure to comply with the law and demonstrated lack of competence in the law, in violation of Canons 2A and 3B(2).

**If you draw an opponent at election time, corner your judge at the end of the PTA meeting and ask if the judge will put up a re-election sign in the judge's yard at home. Assure the judge that there won't be a problem since you have been friends for so long and it will be away from the courthouse and city hall.**

While the Texas Commission on Judicial Conduct has not disciplined a judge for the placement of yard signs, caution is advised. Canon 2B states that a judge "shall not lend the prestige of judicial office to advance the private interests of the judge or others," and Canon 5(2) states that a judge "shall not authorize the public use of his or her name endorsing another candidate for any public office." The Commission on Judicial Conduct held that even when a judge wrote a letter

he believed to be for the editorial section of a newspaper and didn't include the title of "Judge," the letter still constituted a violation of the canons when it appeared later in a paid political advertisement for a candidate.

**If you are having difficulty with stray dogs and are considering a new animal control ordinance, ask the judge to attend the council meeting. Tell the judge in public that you want this ordinance strictly enforced because it is such a problem. Instruct the judge regarding possible fine amounts and other creative judicial orders he or she should use.**

Canon 3B(10) requires a judge to abstain from any public comment regarding a pending or impending proceeding which may come before the court which would suggest the judge's probable decision in the case. Here, if the council dictates fine amounts and other creative judicial orders, that may be construed as suggesting the judge's decision in related cases. The Texas Committee on Judicial Ethics has also held that, by attending a meeting of the county commissioners court where the commissioners directed the judge on past rulings in his court, the judge violated both Canon 3B(10) and Canon 3B(2), which forbids a judge from being "swayed by partisan interests, public clamor, or fear of criticism."

**If your son gets a traffic citation while away at college, ask the judge if he knows the judge in that town and whether he would mind giving the judge a call and letting the judge know that your son is an awesome kid and was an Eagle Scout in high school.**

Canon 2A states that a judge should always act in a manner that "promotes public confidence in the integrity and impartiality of the judiciary." Asking a judge to influence the decision of another judge—or a judge exerting such influence on her own behalf—is inappropriate and a violation of the canon. In addition, Canon 2B bars judges from allowing

any relationship to influence their judicial conduct or judgment, thus prohibiting the judge receiving the request from considering it. Similar actions by judges have been the cause for public admonitions from the Commission in the past. An appropriate response to such a request from another municipal judge or city official is to politely refuse to discuss the matter, and cite the restrictions of the Code of Judicial Conduct.

**If you review the reports made by the municipal court and think that you can raise a lot more money, call the judge in and insist that the court collect more money. Tell the judge that her staff and court personnel will be cut unless the court increases the amount of money collected.**

As the TMCEC *Judge's Book* states, the importance of municipal court revenue plays a significant part in a city's revenue generation. Texas municipal courts generate millions of dollars each year in fines and fees. However, the court should not be viewed as a "cash cow" by the city, nor should the judge fall into being "swayed by partisan interests [or] public clamor," as Canon 3B(2) prohibits it. A judge should remember, though, that municipal court revenues are important to the city's budgeting process, and that city officials are required to be concerned and informed about those revenues. In addition, a city should keep in mind that traffic-offense quotas are prohibited by Texas Transportation Code §720.002, and that a city smaller than 5,000 is limited to having 30% or less of its budget come from traffic citations, under Texas Transportation Code §542.402.

**If the mayor gets a speeding citation in a school zone just a week after he was on the radio advising the citizens to drive carefully in school zones, ask the judge to visit with the mayor privately because a conviction would be very embarrassing and the mayor has some special circumstances to tell the judge about.**



Visiting with the mayor privately would be an ex parte communication, as the mayor is a party in a case pending before the municipal court. Canon 6C(2) specifically states that a municipal court judge shall not permit ex parte communications, except in a few narrow circumstances. The Committee on Judicial Ethics has held that a municipal judge's ethical obligation upon receiving an ex parte communication from a defendant is to: (1) inform the defendant that the call is improper; (2) state that no action will be taken in response to the call; (3) advise against such discussions in the future; and (4) terminate the call. A good way for a judge to explain the situation would be to point out the need to be fair to both the city official involved and the city's prosecutor should the case ever come to trial.

### **Municipal Judges, Here Are Six Ways to Drive Your City Officials Crazy:**

**If you are involved in an accident, tell the others that there is no need for you to stop and give information because you are a judge. Tell them that you work with the police officers every day, and that you will take care of it later.**

By asking the police officers for special treatment, a judge does not promote public confidence in the integrity and impartiality of the judiciary, and also lends the prestige of his or her judicial office to advance his or her own private interests. This action therefore violates both Canons 2A and 2B. In addition, if a judge does receive a ticket and the case is to be heard in his or her own court, the judge must recuse himself/herself as required by Canon 3B(1), as it would be nearly impossible to hear the case without bias or prejudice, as Canon 3B(5) requires.

**If the city manager asks you for information about the standards for**

**properly accounting for and depositing monies collected by the court, tell the manager that it is none of his or her business and you are not obligated to share any information with the city manager or the city council.**

As a part of the city, the municipal court is required to share financial information with the city's governing body. To refuse to do so does not promote public confidence in the integrity of the judiciary, violating Canon 2A. In addition to refusal to provide such information, judges also have been reprimanded for fiscal mismanagement, unposted receipts, unprocessed complaints, failure to file monthly activity reports, and failure to provide public records upon request, among other records issues. These kinds of records problems have been found to indicate a violation of Canon 3B(2), as they show a lack of professional competence in the law.

**If questions arise concerning your temper and conduct while on the bench, call a press conference and assure the media that you have judicial immunity and that it is your courtroom and no one can tell you how to run it.**

Several judicial canons address the temper and conduct of judges while on the bench. Canon 3B(3) requires a judge to maintain order and decorum in court proceedings. Canon 3B(4) requires a judge to be "be patient, dignified, and courteous" not only to litigants, but also jurors, witnesses, lawyers, and all others the judge deals with in an official capacity. Canon 3B(4) also recommends that judges require the same of lawyers and staff under the judge's direction and control. Canons 3B(5) and 3B(6) require a judge to perform his or her duties without bias or prejudice, and Canon 3B(6) prohibits a judge from knowingly allowing a person under his or her direction and control to exhibit bias against individuals based upon race, sex, religion, national origin,

disability, age, sexual orientation, or socioeconomic status.

Some of the more creative punishments handed down by judges have been held to be violations of Canon 2A. The Commission on Judicial Conduct has held that requiring a chronic polluter to drink a nonharmful "toxic sludge cocktail" of the pollutants he dumped and requiring a person convicted of animal cruelty to eat nothing but bread and water for three days does not promote confidence in the integrity of the judiciary, as such orders are unenforceable and in violation of state law.

**If your city is offering training on harassment of employees, tell them that they cannot make you attend. Tell them that a requirement such as this does not apply to you because you have judicial independence and you already know all about this area of the law.**

This is another situation where Canon 2A is important to remember, since refusing to attend required harassment training is not likely to promote public confidence in the integrity of the judiciary. Harassment by judges of court employees and others who appear before the court is, sadly, not unheard of. Such behavior is in direct violation of Canon 3B(4), which requires a judge to be courteous to anyone he or she interacts with in the course of his or her judicial duties.

**If you have a relative that receives a citation, and the city manager asks you about it, tell him or her that you will treat your relative just like anyone else that comes before your court and that it is nothing for him or her to worry about.**

Canon 3B(1) permits a judge to recuse himself/herself when there is a conflict, and Canon 3B(5) requires that a judge perform his or her duties without bias, which can be difficult when family is involved. Even if

it is possible to remain unbiased, Canon 2A requires the judge to act in a manner that promotes public confidence in the integrity of the judiciary. Moreover, the language in Texas Government Code §21.005 does not allow a judge to sit in a case if either of the parties are related to him or her by marriage or blood within the Third Degree. This standard is actually stricter than the nepotism restrictions placed upon elected officials and their relatives.

**If you have waited until the last minute and you don't have time to**

**get your training completed, tell the city manager that it's not really mandatory and besides, you went for the last three years and there's not really anything new this year.**

Rule 5 of the Texas Rules of Judicial Conduct requires that all municipal judges complete a minimum of 12 hours of continuing education per year. New, non-attorney judges must complete 32 hours in the first year. Failure to complete education hours is the number one issue for which municipal judges are reprimanded. TMCEC has many

programs available all over the state to help judges both stay on top of new information in municipal law and fulfill the state's continuing education requirements.

Even though it may feel like municipal judges are from Mars and city officials are from Venus, it doesn't mean they can't all get along. Hopefully, this article, though light-hearted, will allow both judges and city officials to understand each other's positions a little better by understanding the judicial rules of conduct.

### **Minimum Auto Liability Insurance Limits Increase on April 1**

The minimum amount of automobile liability insurance Texas drivers are required to carry for bodily injury/property damage increased on April 1 from the current \$20,000/\$40,000/\$15,000 ("20/40/15") coverage to "25/50/25" coverage.

Texas law requires people who drive in Texas to be financially responsible for the accidents they cause. Most drivers do this by buying auto liability insurance. Liability insurance pays to repair or replace the other driver's vehicle and pays the medical expenses of the other party; it does not pay to repair or replace the policyholder's vehicle.

The current minimum amount of liability insurance required by law was \$20,000 for each person injured in an accident, up to a total of \$40,000 for everyone injured in an accident, and \$15,000 for property damage per accident. The limits increased on April 1 to \$25,000 of coverage for each injured person, up to a total of \$50,000 per accident, and \$25,000 for property damage.

The 80<sup>th</sup> Legislature amended the current financial responsibility law in 2007 to increase the auto liability limits amid concerns that the current limits weren't enough to cover the costs of an accident resulting in severe injury or major vehicle damage.

The limits will increase again on January 1, 2011, to \$30,000 of coverage for each injured person, up to a total of \$60,000 per accident, and \$25,000 for property damage per accident (30/60/25). Drivers who carry minimum limits will begin to notice the new limits as they renew their auto policies or buy a new policy, but they won't need to take any action unless contacted by their insurance company.

There are severe penalties for violating the state's financial responsibility law. A first conviction will result in a fine between \$175 and \$350. Subsequent convictions could result in fines of \$350 to \$1,000, suspension of driver's license, and impoundment of the vehicle. The State of Texas will implement the new Texas Financial Responsibility Verification Program this spring that will allow law enforcement officers to immediately verify whether a driver has car insurance.

For more information about the new limits or automobile insurance coverage, visit the Texas Department of Insurance (TDI) resource page at <http://www.tdi.state.tx.us/consumer/financialrespon.html>, read TDI's *Automobile Insurance Made Easy* publication at <http://www.tdi.state.tx.us/pubs/consumer/cb020.html>, or call the Consumer Help Line at 800-252-3439. For more information contact: [PIO@tdi.state.tx.us](mailto:PIO@tdi.state.tx.us).



# Resources for Your Court

## OCA Annual Report

The Office of Court Administration and Texas Judicial Council have released the *2007 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 with permission in this issue of *The Recorder*. The entire report may be downloaded from ([www.courts.state.tx.us/publications](http://www.courts.state.tx.us/publications)). Also, on the OCA web site, readers may find the statistical reports of the municipal courts by alphabetically by city or numerically by population size.

The *2007 Annual Report of the Judicial Support Agencies, Boards, and Commissions [pdf]*, which details the activities and accomplishments of the judicial branch entities supported by OCA for the fiscal year, is also now available.

## Annual Report: State Commission on Judicial Conduct

The State Commission on Judicial Conduct has released its *2007 Annual Report*, which provides statistical information on the number of violations of the Code of Judicial Conduct filed, investigated and disposed of. On page 14 of this journal is an excerpt showing examples of improper judicial conduct. Got to [www.scjc.state.tx.us](http://www.scjc.state.tx.us) for the entire report. Municipal judges, although the greatest in number of any type of judge in Texas (1,416 judges, 38%), received only four disciplinary actions. See page 17 for illustrations.



### Profile of Municipal & Justice Courts

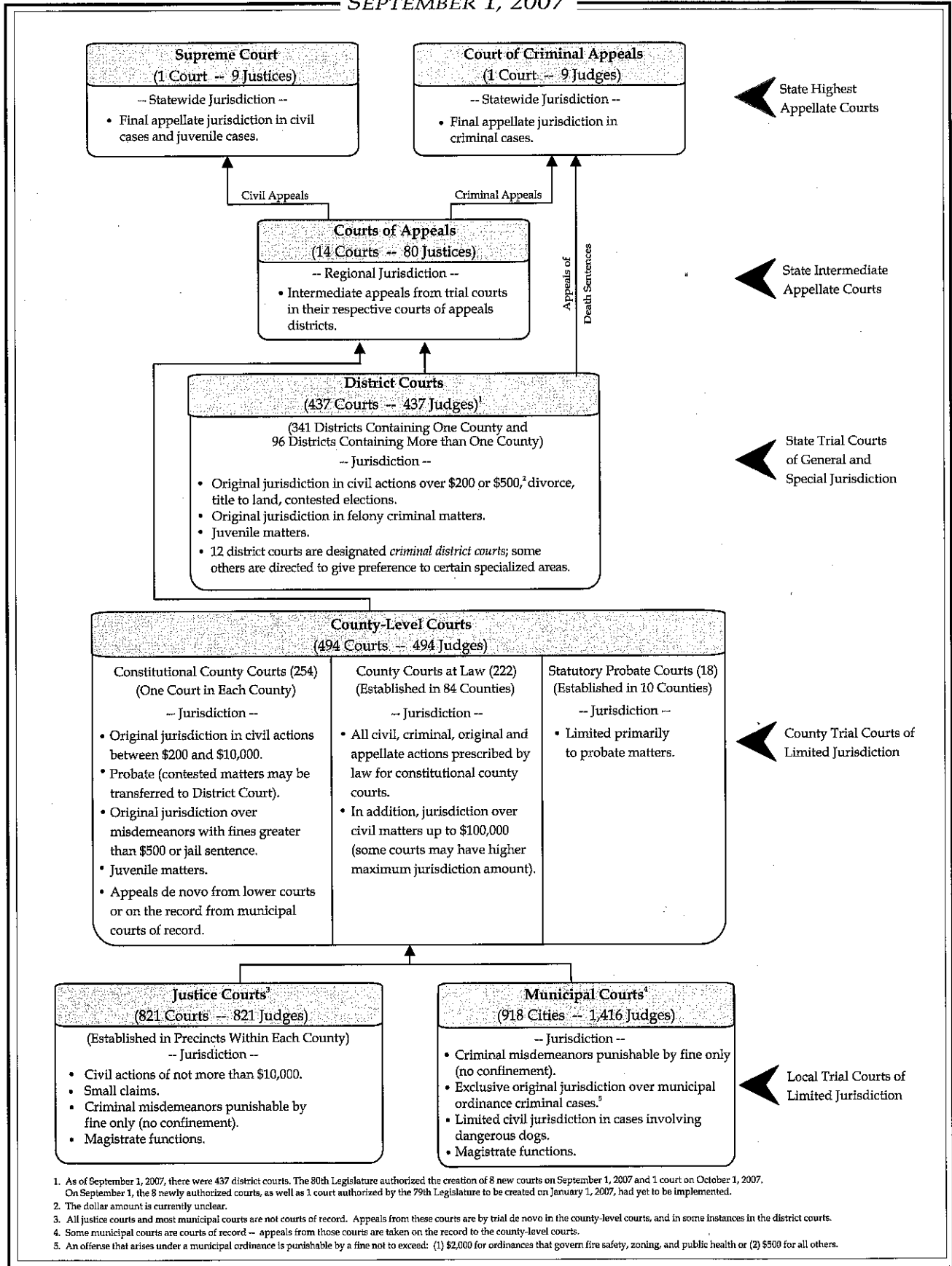
	<u>Municipal Courts</u>	<u>Justice Courts</u>
Number of Judges		
Number of Judge Positions	1,416	821
Age of Judges		
Mean	58	56
Oldest	90	88
Youngest	25	24
Gender of Judges		
Males	920	546
Females	475	270
Length of Service		
Average	8 Yr. 4 Mo.	8 Yr. 9 Mo.
Longest	43 Yr 0 Mo.	44 Yr 4 Mo.
First Assumed Office By		
Appointment	1,368 (99%)	207 (25%)
Election	15 (1%)	608 (75%)
College Graduated	814 (66%)	236 (33%)
Law School Graduated	656 (53%)	58 (8%)

*Excerpt from FY07 Annual Report of Office of Court Administration. Used with permission.*



# COURT STRUCTURE OF TEXAS

SEPTEMBER 1, 2007



Excerpt from 2007 OCA Annual Report. Used with permission.

## Activity Report for Municipal Courts

September 1, 2006 to August 31, 2007

97.9 Percent Reporting Rate  
10,781 Reports Received Out of a Possible 11,016

	Traffic		Non-Traffic		REPORTED TOTALS
	Misdemeanors		Misdemeanors		
	Non - Parking	Parking	State Law	City Ordinance	
<b>NEW CASES FILED</b>	5,581,607	854,695	1,037,739	354,743	7,828,784
<b>DISPOSITIONS:</b>					
Dispositions Prior to Trial:					
<i>Bond Forfeitures</i>	43,704	1,548	13,301	2,119	60,672
<i>Fined</i>	1,508,912	556,288	267,582	78,907	2,411,689
<i>Cases Dismissed</i>	275,334	127,296	84,074	38,854	525,558
<b>Total Dispositions Prior to Trial</b>	<b>1,827,950</b>	<b>685,132</b>	<b>364,957</b>	<b>119,880</b>	<b>2,997,919</b>
Dispositions at Trial:					
<i>Trial by Judge</i>					
Guilty	902,658	20,793	222,262	72,894	1,218,607
Not Guilty	10,561	18,149	2,278	1,064	32,052
<i>Trial by Jury</i>					
Guilty	2,827	56	591	429	3,903
Not Guilty	656	7	217	119	999
<i>Dismissed at Trial</i>	493,876	6,632	112,398	49,325	662,231
<b>Total Dispositions at Trial</b>	<b>1,410,578</b>	<b>45,637</b>	<b>337,746</b>	<b>123,831</b>	<b>1,917,792</b>
Cases Dismissed After:					
<i>Driver Safety Course</i>	441,742	---	---	---	441,742
<i>Deferred Disposition</i>	494,654	1,891	54,954	16,136	567,635
<i>Proof of Financial Responsibility</i>	461,841	---	---	---	461,841
<i>Compliance Dismissal</i>	356,301	---	---	---	356,301
<b>Total Cases Dismissed After</b>	<b>1,754,538</b>	<b>1,891</b>	<b>54,954</b>	<b>16,136</b>	<b>1,827,519</b>
<b>TOTAL DISPOSITIONS</b>	<b>4,993,066</b>	<b>732,660</b>	<b>757,657</b>	<b>259,847</b>	<b>6,743,230</b>
<b>COMMUNITY SERVICE ORDERED</b>	105,104	1,054	33,283	8,765	148,206
<b>CASES APPEALED</b>	12,686	165	2,712	385	15,948
<b>JUVENILE ACTIVITY:</b>					
Transportation Code Cases Filed .....					154,050
Non-Driving Alcoholic Beverage Code Cases Filed .....					36,563
DUI of Alcohol Cases Filed .....					3,261
Health & Safety Code Cases Filed .....					8,587
Failure to Attend School Cases Filed .....					14,414
Education Code Cases Filed .....					9,781
Violation of Local Daytime Curfew Ordinance Cases Filed .....					10,353
All Other Non-Traffic Fine-Only Cases Filed .....					83,692
Waiver of Jurisdiction of Non-Traffic Cases .....					4,055
Referred to Juvenile Court for Delinquent Conduct .....					837
Held in Contempt, Fined, or Denied Driving Privileges .....					7,548
Warnings Administered .....					2,206
Statements Certified .....					802
<b>OTHER ACTIVITY:</b>					
Parent Contributing to Nonattendance Cases Filed .....					7,343
Safety Responsibility and Driver's License Suspension Hearings Held .....					275
Search Warrants Issued .....					5,368
Arrest Warrants Issued					
Class C Misdemeanors .....			2,375,052		
Felonies and Class A and B Misdemeanors .....			79,613		
<b>Total Arrest Warrants Issued .....</b>					<b>2,454,665</b>
Magistrate Warnings Given					
Class A and B Misdemeanors .....			190,749		
Felonies .....			83,818		
<b>Total Magistrate Warnings Given .....</b>					<b>274,567</b>
Emergency Mental Health Hearings Held .....					2,078
Magistrate's Orders for Emergency Protection .....					8,847
<b>TOTAL REVENUE .....</b>					<b>\$685,793,685</b>

*Excerpt from 2007 OCA Annual Report. Used with permission.*



# Ethics Update

## EXAMPLES OF IMPROPER JUDICIAL CONDUCT

The following are examples of judicial misconduct that resulted in disciplinary action by the State Commission on Judicial Conduct in fiscal year 2007. These are illustrative examples of misconduct and do not represent every disciplinary action taken by the Commission in fiscal year 2007. The summaries below are listed in relation to specific violations of the Texas Code of Judicial Conduct, the Texas Constitution, and other statutes or rules. They are also listed in descending order of the severity of the disciplinary action imposed, and may involve more than one violation. The full text of any public sanction is published on the Commission website: [www.courts.state.tx.us](http://www.courts.state.tx.us). A copy may also be requested by contacting the Commission.

These sanction summaries are provided with the intent to educate and inform the judiciary and the public regarding misconduct that the Commission found to warrant disciplinary action in fiscal year 2007. The reader should note that the summaries provide only general information and omit mitigating or aggravating facts that the Commission considered when determining the level of sanction to be imposed. Additionally, the reader should not make any inferences from the fact situations provided in these summaries. It is the Commission's sincere desire that providing this information will protect and preserve the public's confidence in the integrity, impartiality and independence of the judiciary and further assist the judiciary in establishing, maintaining and enforcing the highest standards of judicial and personal conduct.

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

- The judge (a) found a traffic defendant guilty in absentia; (b) failed to provide adequate notice for a show cause hearing in a constructive contempt case; (c) issued orders and fines that he had no authority to enforce against a defendant pursuant to Section 341.037 of the Health and Safety Code; and (d) issued a subpoena to compel the county judge to appear before him when no case or proceeding was pending. A history of resentment between the judge and the traffic defendant's attorney, and the judge's belief that the attorney was not treating the judge with proper respect, contributed to the judge's decision to go forward with the criminal trial in the absence of the defendant and her attorney despite being aware that the attorney was in trial in a courtroom just across the hall. [Violation of Canons 2A, 3B(2), 3B(5), and 3B(8) of the Texas Code of Judicial Conduct.] *Public Admonition of a Justice of the Peace.* (07/13/07).
- The judge attempted to mediate a dispute between two parties prior to criminal charges being filed in the case, issued a "cash only" bond that prevented one of the parties from being released from jail for 25 days, and dismissed a traffic ticket without a motion from the prosecutor and based on an improper *ex parte* communication with a family she knew from church. [Violation of Canons 2A, 2B, and 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning*

*and Order of Additional Education of a Justice of the Peace.* (06/15/07).

- The judge negligently filed a homestead exemption affidavit representing that his primary residence was outside the judicial precinct to which he was elected, when in fact he did reside in the precinct to which he was elected. When the mistake was brought to the judge's attention, he took appropriate steps to correct the error. [Violation of Canon 2A of the Texas Code of Judicial Conduct.] *Private Admonition of a Justice of the Peace.* (05/07/07).
- The judge found a traffic defendant guilty, assessed a fine against him, and suspended his driver's license based solely on telephone conversations with the defendant. [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.* (06/07/07).
- The judge refused to review or approve a *pro se* defendant's appeal bond. The judge's failure to approve the bond, which had been timely filed and was otherwise in compliance with the code of criminal procedure, appeared to have been the sole reason for the decision by the county court to dismiss the defendant's appeal. [Violation of Canon 2A of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace.* (06/14/07).
- The judge dismissed a Class B misdemeanor charge

*continued on pg 15*

against a defendant during the magistration process in the absence of a prosecutor or a motion to dismiss filed by the State. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Municipal Judge.* (08/24/07).

**CANON 2B: A judge shall not allow any relationship to influence judicial conduct or judgement. 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 issued a peace bond without conducting a hearing and without otherwise following procedures set forth in the Code of Criminal Procedure based on complaints filed by an individual with whom he had a personal relationship. The judge failed to follow the law, failed to maintain professional competence in the law, allowed his relationship with the complainant to influence his judicial judgment, used his position to advance another's private interest, and permitted the complainant requesting the peace bond to convey the impression that she was in a special position to influence him. [Violation of Canons 2A, 2B, and 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning of a Justice of the Peace.* (03/23/07).
- The judge interceded in a dispute between two parties in a small claims suit and attempted to assist one of the parties with the collection of a debt. The judge's involvement on the party's behalf lent the prestige of judicial office to advance the party's interest and gave the appearance that the party was in a special position to influence the judge in the small claims action. [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.* (03/01/07).
- The judge wrote a letter to the public housing authority, stating that he was a judge and criticizing his neighbor's behavior. Shortly thereafter, the neighbor's rental assistance was terminated by the housing authority for his behavior. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Private Admonition of a Municipal Judge.* (12/06/06).

**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 presided over an eviction case in which his law partner represented the defendant. The judge knew

or should have known that, because he and defense counsel were law partners, a conflict of interest existed that should have prevented him from presiding over the case and deciding in favor of his law partner's client. [Violation of Canon 3B(1) of the Texas Code of Judicial Conduct.] *Private Reprimand of a Justice of the Peace.* (12/06/06).

**CANON 3B(2): A judge should be faithful to the law and shall maintain professional competence in it.**

- The judge proceeded to trial in a criminal case in the absence of a prosecutor, found the defendant guilty when no *prima facie* proof was presented to the court by a prosecutor, failed to advise the defendant of her basic constitutional rights, and failed to reduce the judgment of conviction to writing. The judge also demonstrated a lack of understanding of the differences between civil and criminal proceedings. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Public Warning and Order of Additional Education of a Justice of the Peace.* (09/29/06).
- The judge (a) met privately with witnesses in a criminal case to discuss the merits of the allegations outside the presence of the defendant and a prosecutor, (b) conducted her own independent investigation of the allegations, (c) failed to take a plea from the defendant, (d) failed to advise the defendant of his basic constitutional rights, (e) proceeded to trial in the absence of a prosecutor, (f) found the defendant guilty when no *prima facie* proof had been presented by a prosecutor, (g) ignored the defendant's right to a jury trial, his right to confront and cross-examine his accuser and witnesses, and his right against self-incrimination, (h) failed to render her judgment in open court, and (i) failed to reduce the judgment of conviction to writing. [Violation of Canons 2A, 3B(2), and 6C(2) of the Texas Code of Judicial Conduct.] *Public Admonition and Order of Additional Education of a Justice of the Peace.* (06/15/07).
- The judge dismissed a Class B misdemeanor charge against a defendant during the magistration process in the absence of a prosecutor or a motion to dismiss filed by the State. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Municipal Judge.* (08/24/07).
- The judge failed to obtain the mandatory judicial education hours during fiscal year 2006 and was ordered to come into compliance by a date certain. [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.* (08/24/07).

**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 made impatient and discourteous comments to a defendant, the defendant's attorney, and a prosecutor when they appeared in court regarding the defendant's probation revocation, and did so in a manner that did not reflect the appropriate temperament or demeanor expected of a judicial officer. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a County Court at Law Judge.* (10/31/06).
- In anger, following a contentious child custody hearing, the judge wrote a letter to a litigant's employer informing the employer that the litigant had behaved disrespectfully and unprofessionally in his court resulting in his finding the litigant in contempt. In the letter, the judge requested that the employer advise her staff to show proper respect when coming to court. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a County Court at Law Judge.* (07/13/07).
- Immediately following the trial of a high-profile criminal case, the judge exhibited a lack of patience, dignity and courtesy required of a judicial official when he intemperately addressed a news reporter and seized the camera equipment from a camera operator as they were attempting to report on the case. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a Former Judge.* (08/24/07).

**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.**

- In a conversation with a jailer following magistration, the judge made a statement regarding an arrestee that was overheard by a number of witnesses. The statement suggested to some members of the public that the judge was exhibiting a bias or prejudice against the arrestee on the basis of race. [Violation of Canon 3B(6) of the Texas Code of Judicial Conduct.] *Private Reprimand and Order of Additional Education of a Municipal Judge.* (07/13/07).

**CANON 5(1)(ii): A judge or judicial candidate shall not knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent.**

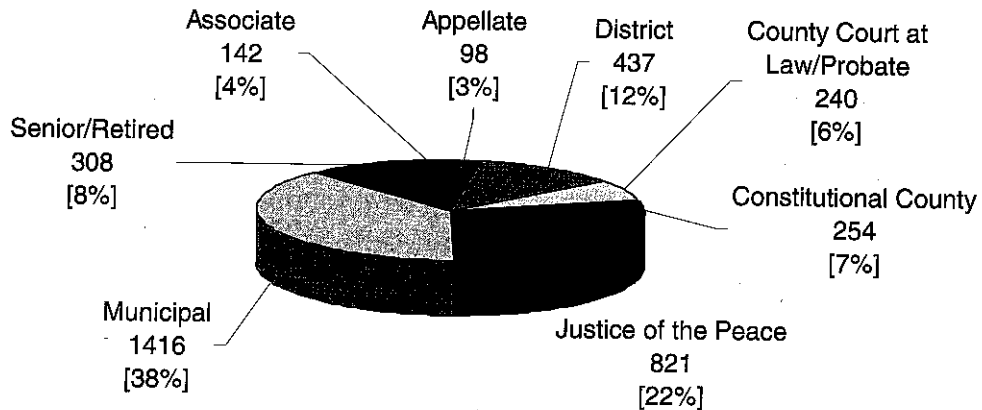
- During his campaign for re-election, the judge knowingly misrepresented that he was endorsed by a group of local judges, when he knew or should have known the judges had disclaimed such an endorsement. [Violation of Canon 5(1)(ii) of the Texas Code of Judicial Conduct.] *Private Reprimand of a Former District Judge.* (05/07/07).

**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 timely execute the business of the court by allowing a defendant's traffic case to remain pending for over 15 months without disposition. Further, the judge's court records in the defendant's case demonstrated a lack of diligence in accurately recording what transpired in the case, including entry of court settings, appearances by the defendant and the prosecutor, pleas, waiver of jury trial, and final adjudication, if any. Additionally, in her responses to inquiries about the defendant's traffic case, the judge exhibited a lack of professional competence in the law regarding traffic cases filed in her court. [Violation of Article V, Section 1-a(6) A of the Texas Constitution and Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Former Justice of the Peace.* (10/04/06).



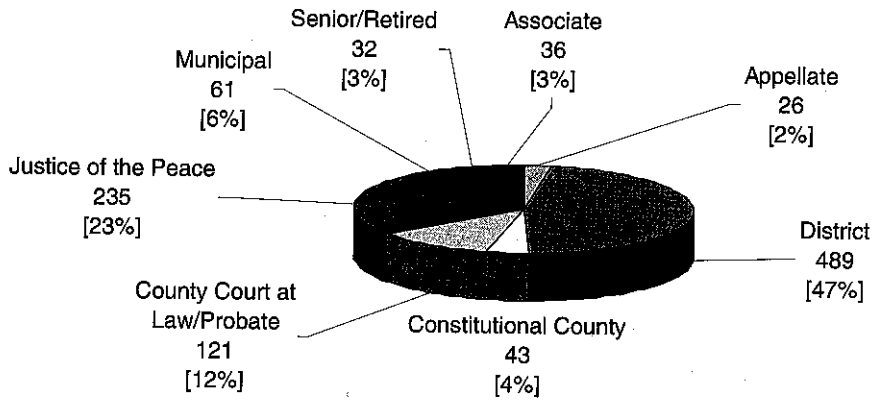
**Fig. 1 Total Number of Texas Judges\***



\*3,716 Total Judges

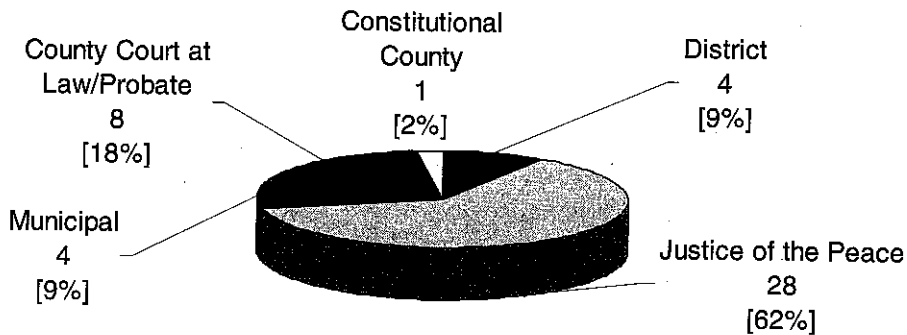
Source: Office of Court Administration (September 2007)

**Fig. 2 Number and Percentage of Cases Filed by Judge Type**



\*1,043 Total Complaints Filed

**Fig. 3 Number and Percentage of Disciplinary Actions by Judge Type\***



\*45 Total Disciplinary Actions

## *Amicus Curiae*

Started in 2001, *Amicus Curiae* ("Amicus") is a judicial disciplinary and education program intended to address a growing concern, often generated by scandals reported by the media, of judicial misconduct caused by impairment. Before the Commission started this program, complaints of judicial misconduct relating to impairment, such as drug or alcohol abuse or mental illness, were sanctioned or dismissed if unfounded. The underlying impairment was never addressed. *Amicus* affords a third option under the Commission's authority to order additional training and education to a judge found to have violated a canon of judicial conduct. *Amicus* offers assistance to the judge to address the underlying personal impairment causally connected to the misconduct. One advantage *Amicus* offers over other similar programs such as the Texas Lawyers Assistance Program operated by the State Bar of Texas is its ability to assist all judges, attorney and non-attorney alike.

Although the confidential referral to *Amicus* by the Commission through the disciplinary process does not shield the judge from any sanction that the Commission deems appropriate, the Commission recognizes that not all impairment issues result in misconduct. In order to reach out to those judges who may be suffering in silence and who may not be the subject of a complaint as a result of their impairment, *Amicus* offers a self-referral component to its program, which affords judges an opportunity to seek assistance, in confidence, outside the disciplinary process.

For more information about the program, including how to make a confidential referral, please contact the *Amicus* Program Manager at 512/463-8138.

### 2008 NJC Courses

The National Judicial College (NJC) is offering several courses for summer and fall for special court judges. The tuition ranges from \$550 to \$1,195, plus a conference fee of \$135 to \$360 depending on location and length of the program. Unless otherwise indicated, the programs listed here are planned for Reno, Nevada. Go to [www.judges.org](http://www.judges.org) for full course descriptions and specifics about each course.

Course	Dates
Conducting the Trial	July 28-31, 2008
Sentencing Motor Vehicle Law Offenders	August 25-28, 2008
Best Practices in Handling Cases with Self-Represented Litigants	October 12-16, 2008 (San Diego, CA)
Ethics for Judges	October 20-21, 2008
Criminal Pre-Trial and Post-Trial Challenges: Solutions for Bail, Supervision, and Sentencing	October 27-30, 2008
Traffic Issues in the 21 <sup>st</sup> Century	November 17-20, 2008

[www.judges.org](http://www.judges.org)



## Traffic Safety - News You Can Use

### *Teen Drivers in the Dark About Greatest Risk, Survey Shows*

Last fall the Teens in the Driver Seat Center of the Texas Transportation Institute (TTI) released its findings highlighting Texas teen knowledge and behaviors of dangerous driving factors. The most comprehensive teen driving study to date in Texas reveals that young drivers are not even aware of the dangers.

TTI researchers surveyed more than 4,400 teens at 17 Texas high schools over the past year. Snapshots of the results include:

- Fewer than one percent of Texas teens understand that driving at night is unsafe, while more than half say they routinely drive after 10 p.m.
- Only a third of teens recognize that it is dangerous to talk or text on a cell phone while they drive, and roughly half of them admit to doing so frequently.
- 72 percent of teens cite alcohol or drug use more often than any other risk factor, even though those factors rank fifth on the list of crash causes.

Car crashes kill about 6,000 teens nationwide each year, with Texas accounting for some 500 of that total, in what has been increasingly described as an "epidemic" in recent years.

Researchers say that crashes are caused primarily by inexperience combined with one or more of the five risk factors, in this order of frequency:

- 1) driving at night;
- 2) distractions (cell phones/texting and other teen passengers);
- 3) speeding;
- 4) low seatbelt use; and
- 5) alcohol.

Fewer than 40 percent of the students surveyed could name three of the risks correctly, 10 percent were able to name four, and fewer than one percent could name all five.

"Nighttime driving is at the top of the danger list, but it's at the bottom of the awareness list," says TDS spokesperson Krizia Martinez. "We're working to change that, because if we can help other young drivers really understand the dangers they face, we can help them drive more safely." TDS involves young drivers directly in the development and in the delivery of safety messages.

"Most of the time, teens don't listen to adults, but we will listen to each other," said Tabitha Zant, a leader of Mason High School's TDS program.

Funding from the Texas Department of Transportation and State Farm Insurance of Texas makes the TDS Program available to Texas high schools at no cost.

#### **Teens in the Drivers Seat**

Teens in the Drivers Seat (TDS) is the nation's first peer to peer driving safety program. TDS promotes peer education on the top five risks associated with teen driving. It is aimed at alerting teens to the preventable causes of car crashes, the Number One Killer of teenagers in the United States, and relies heavily on teens to be directly involved in the development and delivery of traffic safety messages.

So far, TDS has been deployed at over 60 Texas high schools! TDS is America's first peer-to-peer safety program for young drivers. It is aimed at alerting teens to the preventable causes of car crashes and program support provided by TTI and TxDOT.

**To learn more about TDS visit [www.t-driver.com](http://www.t-driver.com)**

# Impaired Driving Laws in Texas

## Here's the Law: Under 21<sup>1</sup>

It is illegal for minors (under 21) to purchase, attempt to purchase, possess or consume alcohol. It's also against the law for minors to misrepresent their age to obtain alcohol.

## Minors in Possession

Here's what happens the first time minors are found in possession of alcohol. Any amount of beer, wine, or liquor will trigger the penalties.

- Up to a \$500 fine
- 30- to 180-day driver's license suspension
- 8 to 40 hours of community service
- Mandatory alcohol awareness classes

A second or third offense can lead to suspension of the minor's driver's license for 60 to 180 days. Those 17 or older can be fined as much as \$2,000 or go to jail for up to 180 days for a third offense or both, plus automatic driver's license suspension.

## Minors Drinking and Driving

It is illegal for minors to drive with any detectable amount of alcohol in their system.

Here's what happens the first time a minor is stopped for drinking and driving:

- Up to a \$500 fine
- 60-day driver's license suspension
- 20 to 40 hours of community service
- Mandatory alcohol awareness classes

Here's what happens to minors 17 and over who are stopped for drinking and driving with a blood or breath alcohol concentration (BAC) of .08 or greater:

- Up to a \$2,000 fine
- Three to 180 days in jail
- Driver's license suspension for 90 days to a year

## Here's the Law: 21 or Older

In Texas, the legal limit for intoxication is .08 BAC (blood or breath alcohol concentration). However, drivers can be stopped and cited when impaired regardless of BAC. Drivers and passengers can be fined up to \$500 for having an open alcohol container in a vehicle.

First Offense	Second Offense*	Third Offense*
<ul style="list-style-type: none"><li>• Up to a \$2,000 fine</li><li>• Three to 180 days in jail</li><li>• Loss of driver's license up to a year</li><li>• \$1,000 or \$2,000 annual fee for three years to retain driver's license</li></ul>	<ul style="list-style-type: none"><li>• Up to a \$4,000 fine</li><li>• One month to a year in jail</li><li>• Loss of driver's license up to two years</li><li>• \$1,000, \$1,500, or \$2,000 annual fee for three years to retain driver's license</li></ul>	<ul style="list-style-type: none"><li>• Up to a \$10,000 fine</li><li>• Two to ten years in prison</li><li>• Loss of driver's license up to two years</li><li>• \$1,000, \$1,500, or \$2,000 annual fee for three years to retain driver's license</li></ul>

*\*After two or more DWI convictions in five years, motorists must install a special ignition switch that prevents their vehicle from being operated if they've been drinking. Also, defendants charged with a subsequent DWI offense are required to install an IID through an approved vendor.*

<sup>1</sup> At age 17, persons are no longer considered children in Texas and face sentencing as an adult. Persons age 16 and younger will be charged with delinquent conduct and sent to juvenile court.

Adapted from materials prepared by the Texas Department of Transportation.

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## Costs of a DWI Arrest

Most people have no idea how much it actually costs to get a DWI in Texas. The total costs for a DWI arrest and conviction range from \$9,000 to \$24,000 for a first time offense across the state. Thus, in addition to the obvious safety risks, there is a tremendous financial risk for Texans who choose to drive under the influence of alcohol.

Depending on the location and unique circumstances surrounding the DWI arrest, the cost goes beyond the fine (\$2,000 for a first-time offense). Some of the estimated costs associated with a Driving While Intoxicated arrest and conviction are as follows.

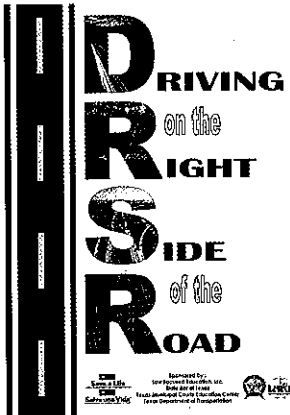
Car towing, impounding	\$30-\$350
Bail for release from jail	\$187-\$5,000
Attorney fees	\$275-\$10,000
Court costs	\$25-\$1,500
Hearing to regain driver license	\$125-\$1,937 (includes attorney fees)
Occupational Drivers License	\$10
DWI fine	\$200-\$2,000
Monthly monitoring visits	\$180-\$1,488 (\$15-\$62 a month for 12-24 months)
Alcohol addiction evaluation	\$20-\$250
Alcohol education course	\$25-\$185
Victim impact panel fee	\$15-\$40
Random urine testing	\$15 each time
Vehicle starting device ("ignition interlock")	\$54-\$150 to install, then \$600-\$2,800 (\$50-\$120 a month for 12-24 months)
Ankle monitor	Up to \$4,500 (\$375/month for 12 months)
Fee to keep driver license (surcharge administered by DPS as Driver Responsibility Program)	\$3,120 (\$1,040 a year for three years)
Extended Proof of Insurance (SR-22)	\$75-\$2,400
Auto insurance rate increase	Varies

The ranges presented here represent the highest and lowest ranges from all six counties included in a 2006 survey conducted by TxDOT.

The fines and bail can vary based on the facts of the case, the prior record of the accused and/or recommendations from the district attorney. Attorney fees also vary based on the location of the case and the experience of the attorney. Additionally, each county in Texas sets its own court costs and other fees (e.g., probation), so these costs vary throughout the state. Also, circumstances of each violator vary, which can affect charges and costs.

The survey based its questions on the assumption that the scenario was a first-time DWI offense citation for someone over the age of 21 with no collision involved. Survey participants in Dallas/Fort Worth, Houston, Austin, San Antonio, El Paso, and the Rio Grande Valley responded to survey questions based on their own experience. Because circumstances vary, costs vary. Some offenders may end up paying high costs, while others may pay much less.

# Public Outreach: Traffic Safety



## Driving on the Right Side of the Road (DRSR)

In the last year, TMCEC has been working closely with the staff and consultants from the Law-Related Education Department of the State Bar of Texas and Law Focused Education, Inc. to develop a traffic safety curriculum guide for grades 4, 7, and high school government. The program is designed to be taught in social studies classes and is aligned with the TEKS (Texas Essential Knowledge & Skills) that are tested in all Texas public schools.

The lessons use interactive strategies and online games to teach traffic safety while studying city government, the three branches of government, and the responsibilities of citizenship. Information sheets provide teachers with background information on municipal court and

traffic laws. A sample Information Sheet is found on pages 19 and 20 of this *Recorder*.

A series of 20 summer workshops will offer training to social studies teachers in the DRSR program. "The program promises to reach thousands of students in the next school year and every student it reaches is a life it may save," said Clay Abbott, DWI Resource Prosecutor at the Texas District and County Attorneys Association (and former TMCEC General Counsel). Clay Abbott and Ryan Turner (TMCEC General Counsel and Director of Education) recently served as resource persons at the train-the-trainer program for the project held in Austin in April. Representatives from the regional education services centers participated in the training.

It is recommended that teachers contact local judges, court support personnel, and city attorneys and ask them to serve as guest speakers in classrooms. Resource persons can bring the lessons alive by providing real life or hypothetical examples and accurate descriptions of what the law requires, as well as serve as positive role models for students.

The Texas Municipal Courts Association is setting up a speakers' bureau for judges and court support personnel who are interested in making presentations to school age children and youth. If you would like to be include, please fill out the Questionnaire shown to the right and fax or mail it back to TMCEC. (Or, you can email the information to [tmcec@tmcec.com](mailto:tmcec@tmcec.com)) Sample lessons, handouts, and background materials will be available on the TMCEC web site: [www.tmcec.com](http://www.tmcec.com) to support guest speakers in the classroom. See the article on page 23 of this *Recorder* for practical tips on how to make an effective classroom presentation.

**Yes, I am interested in making a presentation in a classroom.**

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

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

Tel. #: \_\_\_\_\_

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

Preferred Age Group:

Elementary

Middle School

High School

Return to TMCEC:

[tmcec@tmcec.com](mailto:tmcec@tmcec.com)

512/435-6116 fax

## Practical Suggestions for Visiting Classrooms

### Before Your Visit:

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

### While at School and in the Classroom

#### Do:

- ✓ Check in at the office first.
- ✓ Translate legalese into English.
- ✓ Use a variety of methods and examples.
- ✓ Send material to the teacher for students to read before your presentation (a handbook or pamphlet, chart, case study, or newspaper articles).
- ✓ Have a planned outline of how you would like your presentation to proceed, but be prepared to be flexible.
- ✓ Begin your presentation at the students' level and relate to their world through hypothetical or real examples involving young people and the law.
- ✓ Briefly tell the students about your work and explain the goals of your visit.
- ✓ Move around the room. Use the chalkboard to illustrate ideas or, if available, a Powerpoint presentation to reinforce your points visually.
- ✓ Introduce only one or two main topics and explain them fully.
- ✓ Localize examples for students' interest and understanding.
- ✓ Encourage questions. Repeat questions so all students can hear what was asked.
- ✓ Use humor and a personal approach.
- ✓ Ask the teacher to provide name tags for the students.
- ✓ Express your appreciation to the teacher for incorporating study of the law into lesson plans. Reinforce this with a letter to the principal or superintendent.

#### Don't:

- × Lecture to students.
- × Try to cover a broad range of topics in one class period.
- × Talk down to students.
- × Read a prepared speech.
- × Give advice on individual problems.
- × Let one or two students dominate the discussion. Instead, call on other students or limit the number of questions per person.
- × Feel you must defend everything about the operation of the legal system. An unrealistic portrait of the system can increase student cynicism; a thoughtful, balanced presentation can enhance understanding.

#### Avoid:

- ± Telling too many "war stories."
- ± Combining several classes.
- ± Students may be shy about asking questions in larger groups.
- ± Visiting schools before a school holiday.

 Adapted from *Of Counsel to Classrooms*, a publication of the Texas Young Lawyers Association.



# Court Interpreters

## The Interpretation Hub: A Solution for Larger Courts

By Lois Wright, TMCEC Program Director

If your court is having trouble locating a licensed court interpreter in your area, you aren't the only one. In 2001, House Bill 2735 mandated that any court, located within a county with a population of 50,000 or more, appoint a licensed court interpreter if a motion is made requesting one. Sec. 57.002, Gov't Code.

This legislation affected 54 counties, according to the 2000 census: Anderson, Angelina, Bastrop, Bell, Bexar, Bowie, Brazoria, Brazos, Cameron, Collin, Comal, Coryell, Dallas, Denton, Ector, El Paso, Ellis, Fort Bend, Galveston, Grayson, Gregg, Guadalupe, Harris, Harrison, Hays, Henderson, Hidalgo, Hunt, Jefferson, Johnson, Kaufman, Liberty, Lubbock, McLennan, Midland, Montgomery, Nacogdoches, Nueces, Orange, Parker, Potter, Randall, San Patricio, Smith, Starr, Tarrant, Taylor, Tom Green, Travis, Victoria, Walker, Webb, Wichita, and Williamson.

There is an exception for languages, other than Spanish, which allows a court to use a spoken language interpreter when a licensed interpreter may not be located within 75 miles.

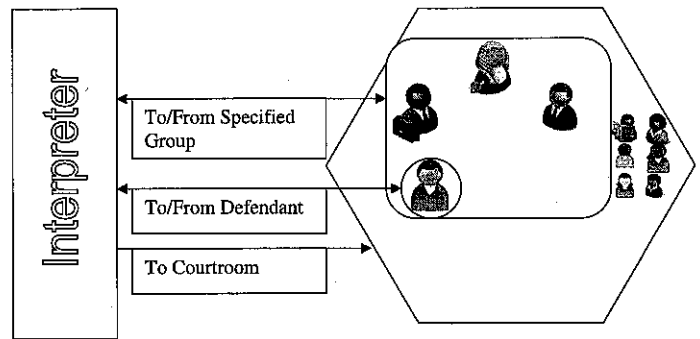
No such leniency exists for those seeking Spanish interpretation, and to compound matters, new educational requirements imposed in January 2007, have caused a drastic reduction in the total number of licensed interpreters in Texas. In December 2006, 662 people were licensed to interpret in Texas, and by March of 2008, this number had fallen 17% to 550. Most of this attrition is due to those license holders who were grandfathered in before the 2001 law was imposed, but had no interest in keeping their license in light of the new continuing education requirement.

With too few qualified interpreters to go around, Florida's Ninth Judicial Circuit Court is testing a new technology that mimics the language line on a localized basis, and at a fraction of the cost. It utilizes a special telephone system that enables interpreters to work remotely to perform simultaneous translations, allowing interpreters to operate out of a central hub, reducing transportation costs and minimizing scheduling problems.

According to a January 2008 article by G.M. Filisko, the system works by allowing court interpreters to report to a central location where they wait, readily accessible, until they are needed. Then, "...if a defendant needs translation, the translator presses, say, the '1' key to send a translation to the defendant only, who hears it through an earpiece."<sup>1</sup> Pressing a different key might send the translation to the entire court, and another number could mute the translation for everyone but the defendant, prosecution, and judge for bench conferences.

This technology far exceeds the "consecutive interpretation" available in most speakerphones, where the interpreter must

wait for speakers to complete a sentence or phrase before beginning, and vice versa. It would allow for actual simultaneous



translation, involving earpieces worn by the court participants needing individual feeds, and a main sound system over which the interpreter's voice could be heard.

Filling out forms and catching nonverbal communication still stands to be an issue, Filisko warns.<sup>2</sup> A video component may adjoin the voice technology to complement those shortcomings. Regardless, it is an exciting step toward answering the problem of too few interpreters with an ever-increasing need.

Licensed court interpreters are encouraged to make every effort to maintain their licensure with the State by attending annual continuing education programs through TMCEC or another approved provider. A list of providers may be found on TDLR's website: [www.license.state.tx.us](http://www.license.state.tx.us). The next TMCEC court interpreter 6-hour seminar is offered June 2, 2008 in Irving at the Omni Mandalay Hotel.

550	Number of Licensed Court Interpreters in Texas in March 2008
662	Number of Licensed Court Interpreters in Texas in December 2006
200	Number of Counties in Texas with Populations under 50,000
54	Number of Counties in Texas with Populations greater than 50,000

<sup>1</sup> Filisko, G.M. "Translation Station," *ABA Journal*, January 2008, page 12.

<sup>2</sup>*Id.*





# From the Center

## Certification Renewal

All clerks and court administrators who are certified at Level I and II are reminded to submit to TMCEC a renewal application with the certificates showing at least 12 hours of continuing education in 07-08. Those certified at Level III must submit documentation of 20 hours of education each academic year. The renewal application may be downloaded from [www.tmcec.com/tmcec/public/files/file/clerks](http://www.tmcec.com/tmcec/public/files/file/clerks).

## TMCEC Products Online

TMCEC t-shirts, totes, caps, koozies, books, videos, and ties may now be purchased by mail. An order form may be downloaded from the TMCEC web site: <http://www.tmcec.com/products.htm>.

## Introducing the New Website: [www.tmcec.com](http://www.tmcec.com)

In 2007, the Texas Municipal Courts Association granted approval to update the existing TMCEC website. The former web design dated back to 2001, fairly antiquated by technology standards, and featured a red, white, and blue theme with an American flag as the central graphic. It was comprised of one level of main navigation across the top menu, where users could locate a specific constituency group and then see a drop-down menu of related links and documents. New information and highlighted events were featured along the left-hand of the site, under the "What's New" area.

### The Website Prior to 1.15.08

TMCEC staff collaborated for nearly a full year to construct the new website, considering the layout of similar sites, the strengths and weaknesses of the existing site, and future utility concerns, as well as our new 501(3)(c) nonprofit status and our goal to make information accessible to the general public as well as the courts.

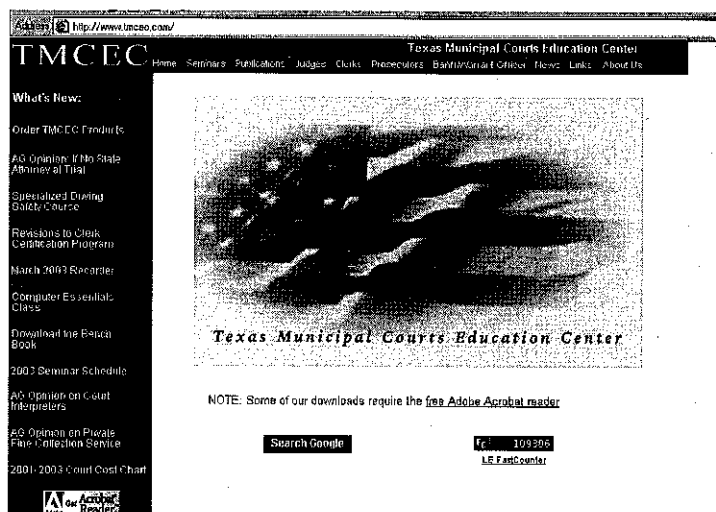
### Primary Changes

#### News & Events

Formerly known as the "What's New" section of the website, this area has simply shifted locations, and is now located along the right-hand side of the screen. We promise to feature current events and items of interest to the courts here, updated on a regular basis. Most recently, upon issuance of the Court of Criminal Appeals case, *Crook v. State* on February 6<sup>th</sup>, TMCEC General Counsel & Director of Education, Ryan Kellus Turner posted a memo outlining its potential impact on municipal courts by the following day.

### Constituent Groups

Our five primary constituent groups, clerks, judges, bailiff/warrant officers, court interpreters, and prosecutors, may access their individualized pages in two ways. First, by clicking on the associated title from the main page's central graphic; and second, by accessing the Programs page and locating the appropriate group. Each constituent group now has its own page, enabling information to be organized by user. For example, judges accessing their



individualized page will find information on judges' seminars on the main page, with other information for newly appointed judges, case law and attorney general opinions, course descriptions for seminar classes, and the Texas Rules of Evidence, among other items, accessible along the right-hand menu.

Constituents may access their individual pages in two ways.



TxDOT-sponsored Municipal Traffic Safety Initiative portion of the website is still available.

News & Events

### TMCEC Program Information

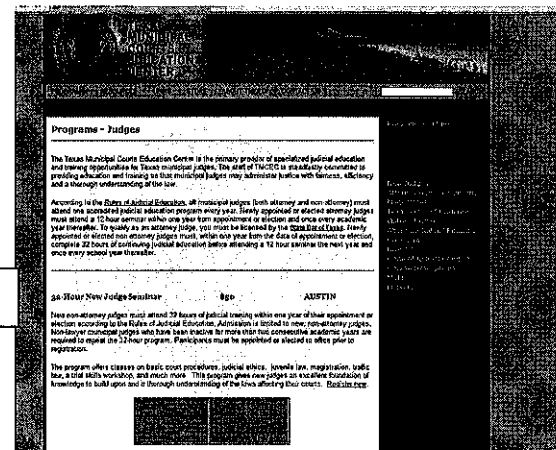
Also under the Programs page, users will find information on registration, canceling, or transferring registration, upcoming seminars of particular interest, archived and upcoming Webinars, and the Academic Catalog with a full explanation of each type of training TMCEC offers. There is also a link for TMCEC faculty to download information on scholarship opportunities, the State mileage reimbursement guide, as well as program contact information.

Tired of faxing in registration forms for TMCEC programs? You may have noticed the 4-, 5-, or 6-digit number associated with your name at TMCEC seminars affixed to everything from your nametag to your table tent. It represents a random number assigned to each TMCEC constituent, and will be utilized when the registration process is taken online next year. You will then be able to get instant feedback concerning your registration status, and ultimately submit payments online as well.

### Resources

Access to information is of primary importance to TMCEC, and the website is an excellent hub to create instant access to our publications, while saving trees and minimizing the distribution of nonsolicited paper copies. You may have recently elected, on postcards from TMCEC, whether to receive paper copies of the 2008 versions of the *Bench Book* and *Forms Book*, or to access them electronically off of our website. This is one of many steps TMCEC is taking to reduce our carbon footprint, or the measure of impact our activities have on the environment in terms of greenhouse gases produced. In fact, this journal itself may now be requested via email rather than in hard copy, so contact Hope Lochridge, Executive Director, at [hope@tmcec.com](mailto:hope@tmcec.com) to receive *The Recorder* in electronic form.

Seminar Information



Other helpful information pertinent to judges

Books, study guides, archived journal issues, charts, and course materials from past programs and legislative updates are all located under the Resources tab, so spend some time there familiarizing yourself with all of the rich publications available to you in your professional development.

Also, in the On the Docket section, we have compiled topics that are of interest during the daily operation of municipal courts in Texas. It currently contains instruction on how to participate in Municipal Court Week, information on the Statewide Warrant Round-up, and a database of jury charges contributed by our constituents.

## Links

Links allow you to visit the homepages of separate websites directly from www.tmcec.com. Whether you are looking for links to other government agencies, the Code of Judicial Conduct, or just going to search for the contact information for a neighboring court, you can access commonly frequented sites through our Links page.

## Store

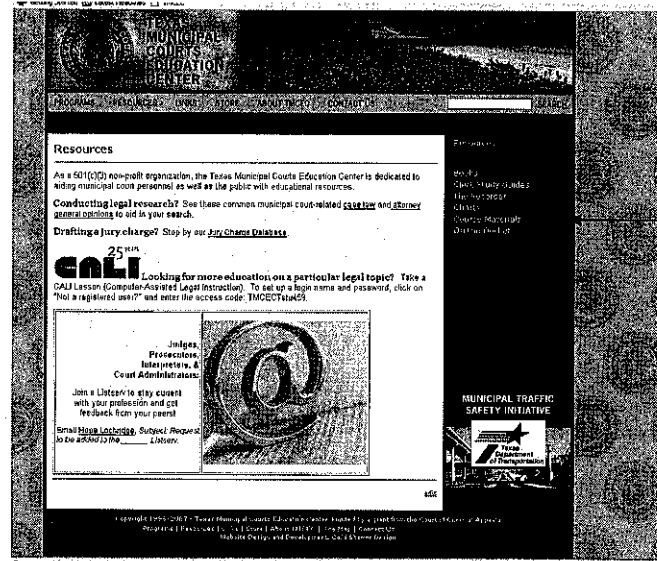
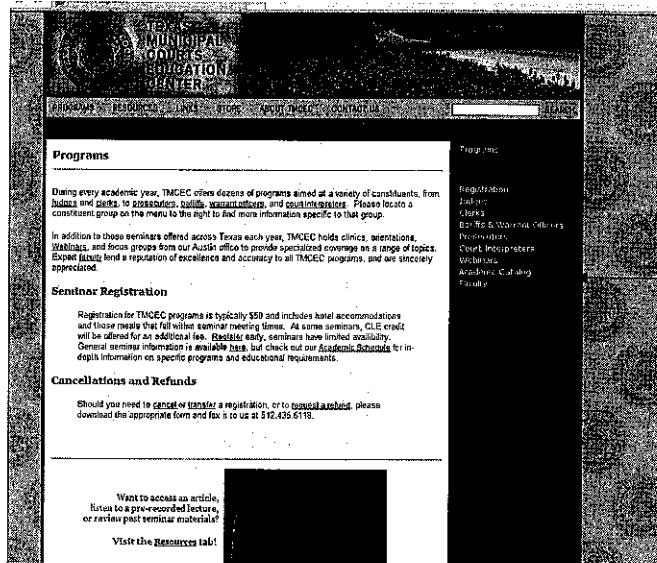
Looking to order additional copies of TMCEC publications or a special gift for a co-worker or family member? Visit the TMCEC Store to peruse photos of t-shirts, caps, and other merchandise available for purchase through TMCEC.

## About TMCEC & Contact Us

Information concerning our new nonprofit designation and ways to contribute ideas and make donations to TMCEC are located on the About TMCEC page. Under Contact Us, you can find a map and physical address for the Center, as well as email addresses for our staff.

## Final Note

TMCEC would like to thank Lei Holder, Annette Jones, and Angela Hahn for submitting photographs to be featured on the new website that load at random on the top of the screen. If you have other photographs that might fit in with our Texas theme, please submit them to [tmcec@tmcec.com](mailto:tmcec@tmcec.com).



The website design was by Austin web developer, Cold Shower Design, [www.coldshowerdesign.com](http://www.coldshowerdesign.com).

## Court Administrator Program

TMCEC will offer a Court Administrators' Program in Dallas on June 30-July 2, 2008 at the Omni Dallas Park West Hotel. The program will include the following sessions:

- **Introducing the New Code of Conduct for Clerks.** *The Commission on Judicial Conduct promulgated new canons of ethics for clerks in 2008. This class familiarizes court administrators to the new canons and provides a forum for discussing ways to integrate the canons into your court.*
- **Checking the Numbers Workshop.** *Software companies are human, too! Bring a copy of your current court cost and penalty range print-outs to double check each individual court cost and its breakdown between the municipality and the state. Also featuring a Q&A session on preparing for audits by the Comptroller's Office.*
- **Speaking Effectively to the Public.** *Handling defendants, attorneys, and members of the general public efficiently and courteously is an ongoing challenge for Texas courts. Gain training ideas, examples, and resources to take back to your court to enhance the interaction between clerks and the public.*

To register, please use the registration form found on page 31 in this Recorder.

### Annual Meetings Planned

GCAAT Annual Collection Conference  
Government Collectors Association of Texas  
Horseshoe Bay Marriott  
Horseshoe Bay, Texas  
May 27-29, 2008  
www.gcat.net

TMCA Annual Meeting & Educational Seminar  
Texas Municipal Courts Association  
Lakeway Inn and Resort  
Lakeway, Texas (west of Austin)  
September 11-13, 2008  
www.txmca.com

National Court Collections Conference  
Golden Nugget Hotel & Casino  
Las Vegas, Nevada  
September 22-24, 2008  
www.gcat.net

TCCA Annual Meeting and Convention  
Texas Court Clerks Association  
Omni Corpus Bayfront  
Corpus Christi, Texas  
October 5-8, 2008  
www.texascourtclerks.org

## Court Interpreters' Program

TMCEC will offer its Court Interpreter Program, Level 1 & 2 at the Omni Mandalay at las Colinas Hotel on June 2, 2008 in Irving. Its primary focus will be on Spanish vocabulary and phraseology for examples.

The Texas Department of Licensing and Regulation has approved this two-track program offered by TMCEC. Please register for either the Level 1 or Level 2 Program based on your familiarity with municipal court and experience interpreting. You may only enroll in the Level 2 Program if you attended the TMCEC Court Interpreters Program in FY 07.

On-site registration will be held from 6:45-8:00 a.m. on the day of the conference. Breakfast and lunch will be provided. Registration fee: \$50.

This course will constitute eight hours of continuing education for licensed court interpreters including two hours of ethics credit. Credit for this course may also count towards court clerks' certification requirements. This course DOES NOT prepare interpreters to sit for the TDLR licensing examination.

June 2, 2008  
8:00 a.m. - 5:00 p.m.

Level 1 Program: "Lost in Translation" **Found**

- Laws and Regulations Affecting Court Interpreters
- Interpreters' Ethics
- The ABCs of Municipal Court Trials
- Beginners Courtroom Terminology Workshop
- Municipal Court Jurisdiction
- The Interpreter's Role in Magistration

Level 2 Program: "Open to Interpretation"

- Laws and Regulations Affecting Court Interpreters
- Interpreters' Ethics
- Case law Impacting Court Interpreters
- Trial Procedures in Municipal Court
- Advanced Courtroom Terminology Workshop
- Mock Trial: Questions and Conundrums

**Who May Participate?** Licensed court interpreters who are municipal court employees or licensed court interpreters who contract with a municipal court on a full-time basis are invited to attend. Interpreters must be licensed to interpret (Section 57.002(a) & (b), Gov't Code) unless the interpreter may be unlicensed by statute (Sections 57.002(c) & (d)).

May 21, 2008

10:00 am to 5:00 pm



## *COURAGE TO LIVE*

An Award-Winning Judicial Outreach Program to Combat Underage Drinking and Driving  
developed by the National Judicial College

Judges are leaders of their communities. They have the education, resources, and skills to solve many of the problems they ultimately adjudicate by getting involved in judicial outreach activities.

Many of our nation's traffic court judges who adjudicate alcohol-related cases report that the individuals who appear before them are getting younger every year. These judges are also in a unique position to see the devastating and often fatal consequences associated with underage drinking and driving.

The *Courage To Live* program provides a vehicle for interested judges to get involved in prevention education in their local schools. The program also provides our nation's judges with the teaching tools, resources, and information they need to deliver a strong prevention message to our nation's youth. It is critical that young people are aware of the fact that the choice they make regarding underage drinking and driving could be a life or death decision.

The *Courage to Live* program is a judicial outreach program to combat underage drinking and driving. The program allows interested judges to get involved in prevention education in their local schools. It provides judges with the teaching tools, resources, and information they need to deliver a strong prevention message to our nation's youth.

The program is divided into two sections. First, there is a review of current trends in juvenile drinking and driving, with an emphasis on how underage drinking affects the developing youthful body. Second, participants will learn the steps necessary in making effective presentations of that information to that special teenage population.

Participants will learn how to speak so that teenagers will listen. It will also provide the participants with content ready presentations that he or she can take back to their jurisdiction and quickly implement.

Judges are invited and encouraged to attend this pre-conference at no charge, even if you are not attending the Traffic Safety Conference. If you would like to attend this special pre-conference, please contact Lisa Robinson, Grant Administrator at [robinson@tmcec](mailto:robinson@tmcec) or 512-320-8274 to register.

Note: A limited number of court administrators, clerks, prosecutors and city officials are also encouraged to register.

This course is funded in part by the National Highway Traffic and Safety Administration and a grant from the Texas Department of Transportation.

### Pre-Conference Registration Form

#### *Courage to Live*

May 21, 2008 10:00 a.m. – 5:00 p.m.

There is no registration or fee to attend this program.

6 hours of CLE credit is provided for the *Courage to Live* pre-conference.



Yes, I plan to attend this program.

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

Court/City: \_\_\_\_\_

To register for this pre-conference,  
Please fax this form to 512/435-6118  
or email [harper@tmcec.com](mailto:harper@tmcec.com)

Questions? Call Lisa Robinson at 800/252-3718

## TMCEC 08 Programs

May 21, 2008	Courage to Live Pre-Conference	Irving	Omni Mandalay at Las Colinas
May 22-23, 2008	Traffic Safety Conference	Irving	Omni Mandalay at Las Colinas (Wait List)
June 2, 2008	Court Interpreters I	Irving	Omni Mandalay at Las Colinas
June 2, 2008	Court Interpreters II	Irving	Omni Mandalay at Las Colinas
June 18-20, 2008	Judges 12-Hour Regional	El Paso	Camino Real Hotel
June 18-20, 2008	Clerk 12-Hour Regional	El Paso	Camino Real Hotel (Wait List)
June 30-July 2, 2008	Bailiff/Warrant Officer	Dallas	Omni Park West
June 30 – July 2, 2008	Court Administrator	Dallas	Omni Park West (Wait List)
July 7-11, 2008	New, Non-Attorney Judge 32-hour program	Austin	Doubletree Hotel
July 7-11, 2008	New Clerks 32-hour Program	Austin	Doubletree Hotel (Wait List)

### Order Form

The Texas Court Clerks Association and the Texas Court Clerks Education Committee are proud to present the *Texas Municipal Court Clerks Procedures and Reference Guide* and *Texas Municipal Court Financial Management Handbook*.

These publications are specific for Texas municipal courts. The *Procedures and Reference Guide* is designed to give clerks step-by-step procedures for municipal court processes. The *Financial Management Handbook* is a financial guide for municipal courts that assist in budgeting, court costs, and internal controls.

To order your copy, check the book(s) and complete the order form below:

\_\_\_\_\_ *Texas Municipal Court Clerks Procedures and Reference Guide* \$35.00

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Name: \_\_\_\_\_ Position Held: \_\_\_\_\_

Primary City Served: \_\_\_\_\_ Contact Number: (\_\_\_\_) \_\_\_\_\_

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

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

Mail this completed form with payment to: Elaine Brown, City of Katy, PO Box 617, Katy, Texas 77492-0617. Please make check payable to: TCCA.

**(Do not write in this section—for TCCA use only)**

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Amount of Payment: \_\_\_\_\_ Form of Payment: \_\_\_\_\_ Receipt #: \_\_\_\_\_

**TEXAS MUNICIPAL COURTS EDUCATION CENTER  
2008 REGISTRATION FORM**

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

*Check one:*

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Non-Attorney Judge (\$50 fee)                    | <input type="checkbox"/> Clerk/Court Administrator (\$50 fee)   | <input type="checkbox"/> Prosecutor not seeking CLE credit (\$250)      |
| <input type="checkbox"/> Attorney Judge not seeking CLE credit (\$50)     | <input type="checkbox"/> Bailiff/Warrant Officer* (\$50 fee)    | <input type="checkbox"/> Prosecutor seeking credit CLE (\$350)          |
| <input type="checkbox"/> Attorney Judge seeking CLE credit (\$150)        | <input type="checkbox"/> Licensed Court Interpreter* (\$50 fee) | <input type="checkbox"/> Prosecutor not seeking CLE/no room (\$100 fee) |
| <input type="checkbox"/> Traffic Safety Conference-Judges & Clerks (\$50) | <input type="checkbox"/> Assessment Clinic (\$100 fee)          |   |

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

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

**HOUSING INFORMATION**

TMCEC will make all hotel reservations from the information you provide on this form. TMCEC will pay for a single occupancy room at all seminars: four nights at the 32-hour seminars, three nights at the 24-hour seminars/assessment clinics, two nights at the 12-hour seminars, and one night at the 8-hour court interpreters seminar. To share with another seminar participant, you must indicate that person's name on this form.

- I need a private, single-occupancy room.  
 I need a room shared with a seminar participant. [Please indicate roommate by entering seminar participant's name: \_\_\_\_\_ (Room will have 2 double beds.)]  
 I need a private double-occupancy room, but I'll be sharing with a guest. [I will pay additional cost, if any, per night]  
I will require:  1 king bed  2 double beds  
 I do not need a room at the seminar.

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

Municipal Court of: \_\_\_\_\_ Email Address: \_\_\_\_\_  
Court Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_  
Office Telephone #: \_\_\_\_\_ Court #: \_\_\_\_\_ FAX: \_\_\_\_\_  
Primary City Served: \_\_\_\_\_ Other Cities Served: \_\_\_\_\_

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

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

**\*Bailiffs/Warrant Officers/Marshals/Court Interpreters:** Municipal judge's signature required to attend Bailiff/Warrant Officer/Marshal/Court Interpreter programs.

Judge's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Municipal Court of: \_\_\_\_\_

I certify that I am currently serving as a municipal judge, prosecutor, or court support personnel in the State of Texas. I agree that I will be responsible for any costs incurred if I do not cancel five working days prior to the conference. 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 plus tax per night). I understand that I will be responsible for the housing expense if I do not cancel or use my room. If I have requested a room, I certify that I live at least 30 miles or 30 minutes driving time from the conference site. Participants in the Assessment Clinics must cancel in writing two weeks prior to the seminar to receive a refund. **Payment is due with the registration form. Registration shall be confirmed only upon receipt of registration form and payment.**

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

Date \_\_\_\_\_

**PAYMENT INFORMATION:**

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

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

Credit Card Number \_\_\_\_\_

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Credit card type:

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

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

Please return completed form with payment to TMCEC at 1609 Shoal Creek Boulevard, Suite 302, Austin, TX 78701, or fax to 512/435.6118.

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## **Azeez Opinion Reversed by the CCA**

Did the complaint accusing the defendant of violation of promise to appear (Section 543.009, Transportation Code) (commonly know as VTPA) give him sufficient notice of the act he allegedly committed? While the Fourteenth Court of Appeals said "Yes." The Texas Court of Criminal Appeals on March 5, 2008 said "No."

Because of the Code Construction Act's "rule of the specific," the Texas Municipal Courts Education Center has consistently stated that failure to appear (Sec. 38.10, Penal Code) (commonly known as FTA), VPTA, and local non-appearance ordinances are separate and distinct offenses that require specific charging instruments.

Despite TMCEC efforts to emphasize the distinction among such offenses, a number of prosecutors and courts continue to treat such offenses as being essentially one and the same.

From now on, TMCEC will be citing this decision for the proposition that while FTA and VPTA are in *pari materia* (of the same matter), a defendant issued a citation for a Subtitle C Rules of the Road offense should be prosecuted for VPTA when the defendant fails to appear.

To download *Azeez v. State* (No. PD-010-07), please visit [www.tmcec.com](http://www.tmcec.com).

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

**Change Service Requested**