Municipal Court Recorder

Volume 13 JANUARY 2004 No. 3

Federal and State Case Law Update

By Ryan Kellus Turner, Program Attorney & Deputy Counsel, TMCEC

Except where otherwise noted, the following summarize opinions handed down October 1, 2002 through September 31, 2003.

I. United States Supreme Court

A. Search and Seizure

Kaupp v. Texas, 23 S.Ct.1843 (2003)

A confession obtained by exploitation of an illegal arrest may not be used against a criminal defendant. The Court held that Kaupp had not accompanied officers voluntarily. Taking into account the handcuffing, leaving him undressed in cold weather, and the admitted lack of probable cause, the Court held that Kaupp had been illegally placed under arrest at his home, and that the confession should have been suppressed at trial. The Court reiterated that the standard for whether an individual is under arrest is whether the police actions would "have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business." The Supreme Court remanded Kaupp's case for proceedings consistent with the opinion.

B. 14th Amendment: Equal Protection

Lawrence v. State, 123 S.Ct. 2472 (2003)

Section 21.06 of the Texas Penal Code, a Class C misdemeanor, prohibiting two persons of the same sex from engaging in homosexual conduct violates the Due Process Clause of the Fourteenth Amendment. In reversing the ruling of the Court of Appeals for the Texas Fourteenth District, the Court also overturned its previous decision in *Bowers v. Hardwick* (upholding the constitutionality of criminal statutes prohibiting consensual sodomy).

C. First Amendment: Freedom of Speech

Virginia v. Black, 123 S.Ct. 1536 (2003)

A state may ban cross burning carried out with the "intent to intimidate" without violating the First Amendment. However, in this particular case, the act of cross burning itself was held to be insufficient evidence to infer "intent to intimidate," thus the Court struck down the Virginia statute's *prima facie* provision.

Case Law Update continued on page 5

Attorney General Opinion Update

By Ryan Kellus Turner, Program Attorney & Deputy Counsel, TMCEC

Except where otherwise noted, the following summarize opinions handed down October 1, 2002 through September 31, 2003.

JC-0544 (8/4/2002)

Authority of a general-law municipality to assign to a "city administrator" duties reserved by statute to the mayor or city manager

General-law cities are creatures of statute and have only those powers expressly granted by statute or that are necessarily implied. The legislature has expressly designated the mayor of a general-law city as the budget officer of a municipality, unless the municipality has adopted the city manager form of government, and has assigned specific duties by statute to the mayor. The city council has no authority to reassign the mayor's statutory duties to another

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Published by the Texas Municipal Courts Education Center through a grant from the Texas Court of Criminal Appeals. Subscriptions are free to all municipal judges, clerks, prosecutors, and support personnel employed by the municipal court. Others may purchase an annual subscription for $50.

AROUND THE STATE

Willing Named SCJC Executive Director

The members of the State Commission on Judicial Conduct announce the appointment of Seana Beckerman Willing to the position of Executive Director. Ms. Willing has been employed as an attorney for the Commission since September 1999. In May 2001, Ms. Willing began serving as the agency's General Counsel.

Ms. Willing received her bachelor's degree in Economics from Holy Cross College (Worchester, Massachusetts) in 1985, and her law degree from St. Mary's University School of Law (San Antonio) in 1993. Ms. Willing has been licensed to practice law in Texas since November 1993, and is also licensed to practice before the United States District Court for the Western District of Texas and the United States Supreme Court. Prior to coming to the Commission, Ms. Willing served as an Assistant General Counsel for the San Antonio Regional Office of the State Bar of Texas, where she prosecuted disciplinary actions against attorneys, and was in private practice with the law firm of B. Thomas Hallstead, P.C., in San Antonio, where she practiced primarily in the area of business litigation.

Ms. Willing has served as Interim Executive Director for the Commission since June 2003. She has served on the TMCEC faculty since 1999 and TMCEC congratulates her on her appointment.

Evidence Seminar

TMCEC is offering a Special Topic Seminar on *Evidence* on January 15-16, 2004 at the Omni Park West in Dallas. The program will cover applying the Texas Rules of Evidence to issues encountered in municipal court. The program was offered last year and highly rated by participants who made the following comments:

> "One of the best seminars; very informative."
>
> "This is the best course that has been offered in 10 years. Thanks! Please give us more seminars like this — one subject broken down and digested."

Judges who attended last year are **not** eligible to attend this year's program. The program is approved for mandatory judicial education for municipal judges. Judges may attend this program and also attend a traditional 12-hour TMCEC regional conference, but will be responsible for the expense of one of the two programs. To register, use the form on page 27 of this newsletter. Although the registration deadline has passed, TMCEC is holding a number of rooms for late registrants.

FROM THE GENERAL COUNSEL

W. Clay Abbott

My father was fond of telling me that should I fail in every other regard—and my more public blunders are a matter of family lore—at least I would succeed in being a bad example and object lesson for my younger siblings. In this issue, a number of sanctions from the State Commission on Judicial Conduct are summarized. In discussing three of them, I do not attempt to add to the sting of the sanctions given these judges, but, like my father, use them as instructional bad examples. Three different issues are raised by these sanctions: Demeanor, Diligence, and Competence.

Demeanor: No Loud Talk Allowed

In December of 2002, the Commission filed a "Notice of Formal Proceedings against a Brazoria County Justice of the Peace. That notice—and subsequent findings of fact—centered on obscene and racially offensive language used by the court in magistrate hearings at the jail. Canon 3B(4) of the Texas Code of Judicial Conduct requires that a judge "…be patient, dignified, and courteous to litigants… ." Canons 3B(5) & (6) prohibit the judge from acting on or manifesting bias or prejudice. In the notice, the examiners charge that, "The use of such language promotes disorder and detracts from the proper decorum a judge must maintain." Further, the examiners stated that the racially offensive language used by the judge displayed "a fundamental lack of the dignity and courtesy every judge must accord to every litigant." They also concluded the judge's language, "… blatantly manifested a racial prejudice… ."

Defendants are routinely convicted and found in contempt in municipal court based on the words they use and the way they use them. Judges must conform to a higher, not a lower standard. There is a particular temptation to imitate the demeanor and style of those with whom we converse. The judge should never drop to the level of those who have temporarily—or more permanently—made jails and prisons their homes. Rather, through the display of judicial decorum, the magistrate should earn the respect of even the chronically disrespectful. The court should require decorum even in jail, but never by being the biggest thug.

This topic is not a new one in the pages of this publication. But, a little reminder never does us any harm. Which would also explain my Dad's continued effort to reform me after most folks would have despaired.

Diligence

Scarcely a month goes by that a clerk from somewhere in Texas doesn't inform me that the procedure for jury trial request or some other logistically challenging process is handled by placing the case in a file, basket, or drawer where it waits until the case is old enough to dismiss. On August 15, 2003, the Commission issued a Public Admonition to a Dallas County JP for this exact technique.

Canon 2A of the Texas Code of Judicial Conduct requires a judge to comply with the law. Canon 3B(9) requires a judge to, "dispose of all judicial matters promptly, efficiently, and fairly." The JP's Public Admonishment sets out several instances where civil cases simply fell through the cracks. The judge's explanation that the chief clerk had quit leaving a "big mess" seemed to make no impact on the Commission. The Commission also admonished the judge for failing to file court costs and activity reports. Failing to promptly issue receipts was also mentioned.

One look at my desk will properly exclude me from the ranks of the perpetually organized. Logistical competence is perhaps an innate gift. Yet, the message of the Commission is unmistakable, the judge has an ethical duty to see that the court is run according to the law in an efficient manner. There is often a temptation to put the responsibility of efficiency and legal compliance on the shoulders of our court's very competent support staff. This Public Admonishment is a clear reminder that the efficient and legal administration remains the ethical responsibility of the judge.

Just as an improper judicial demeanor ruins public confidence, so too does an obviously poorly run court. The public holds our public institutions—perhaps courts in particular—to a high standard of efficiency. Prosecutors and police also expect a lot from the courts. Their ability to enforce the law and to do justice depends just as much on the court's prompt and efficient discharge of cases as it does on the court's fairness and impartiality.

Municipal courts impose personal responsibility on defendants before court as the primary function of the court. To maintain any credibility, the court cannot fail to meet its own legal responsibilities.

Competence: Getting a Plea, Unauthorized Fees, and Bond/Special Expense/Fine

A justice of the peace, also serving as a municipal judge, received an Amended Public Admonishment by the Commission on Judicial Conduct on October 28, 2003 for a series of procedural gaffs far too common in too many municipal courts. The Admonishment stated that the procedural errors "displayed a failure to maintain competence in the law, in violation of Canon 3B(2)."

Two of the three complainants were defendants in criminal cases. In both of those incidents, the Commission took umbrage at the judge's failure to obtain a voluntary plea of guilty or no contest before assessing "dismissal fees" or placing the defendant on deferred disposition. Failure to properly take a voluntary plea has been the factor in a great many recent sanctions by the Commission. The necessity of taking and documenting a plea, and of entering a judgment should not be underemphasized. So many ethical breeches start with this early procedural failure.

The Commission also expressed particular ire that the judge advised the defendant not to contest the matter. In any level of court, the defendant's plea must be voluntarily given, that is free of influence of the court, to be valid. To comment on the expensive car driven by the defendant and to state that the defendant "did not need to contest the matter," were found by the Commission to violate Canon 3B(4). The right to a fair and impartial judge is totally inconsistent with a judge that suggests or favors one plea over another.

In one of the three instances, the judge charged an administrative fee for dismissals of a number of complaints after the defendant vaccinated the dogs, she was charged with not vaccinating. No statutory authority exists to charge such a fee. Article 45.203(d), Code of Criminal Procedure, specifically prohibits a municipality from creating cost by ordinance. Often, judges and clerks ask me "where it says" that judges cannot make up and charge fees as they wish. I can't point you to that statute. I also can't find a statute that says the municipal judge cannot move the stars in the firmament. But they can't. (This may come as a shock to some.) The court may only impose fines in the range provided by statute or ordinance, and may only impose costs or fees provided by statute. Especially problematic is requiring defendants to pay fees when they have not plead to, nor been found guilty of offenses. (There are some statutorily provided instances involving registration and inspection offenses.) As has been noted before in my column, many courts improperly assess these unauthorized fees, expenses, or charges. The risk now includes sanction by the Commission, as well as lawsuits and audits by the Texas Comptroller.

Finally, the Commission specifically admonished the judge for failure to understand the procedural workings of deferred disposition under Article 45.051, Code of Criminal Procedure. In this instance, the judge charged both a fine and a special expense fee. The Commission specifically found:

> According to Art. 45.051(c) of the Code of Criminal Procedure, a court can collect a "special expense" in lieu of a fine only after a deferral period has been served, and after the defendant has complied with any other requirements imposed at the time of the finding of guilt.

A special expense is assessed only upon dismissal. A fine is assessed only upon revocation and imposition of a judgment of guilt. During the deferred period the court may order the defendant to "post a bond in the amount of the fine assessed to secure payment of the fine," pursuant to Article 45.051 (b)(1), Code of Criminal Procedure. The defendant could agree in the bond to have the court use the bond for payment of the special expense assessed on dismissal.

Briefly restated: 1) the defendant pays a bond, which remains a bond during the deferred period; 2) if the defendant fails to abide by the terms of the deferred, the defendant is revoked, assessed a fine, and the bond forfeited to pay the fine; or 3) the defendant completes the deferred terms, the case is dismissed, a special expense is assessed, the bond is used to pay the special expense by agreement of the defendant.

In no instance are a fine and special expense fee both permitted under the law. For the wrongful application of these provisions, the judge was found to have violated Canon 3B(2). That Canon requires the judge maintain professional competence in the law. It is my hope that this publication helps judges, prosecutors, and support staff remain faithful to the law and maintain professional competence in the law.

Revised EPO

TMCEC has revised its Emergency Protection Order. The new form is available on the TMCEC web site [**www.tmcec.com**] or by calling the Center for a copy. Copies will be mailed to all courts in late January.

Case Law Update continued from page 1

II. Texas Court of Criminal Appeals

A. Search and Seizure

1. Reasonable Suspicion to Approach or Knock

State v. Perez, 85 S.W.3d 817 (Tex.Crim.App. 2003)

In the case of an encounter, a police officer may stop and ask questions of a person without reasonable suspicion. Here, the officer merely slowed down his vehicle to get a closer look at the defendant. This was at most an encounter. When the defendant ran to his apartment, the officer followed him and knocked on the door. This, too, was simply an encounter. Reasonable suspicion was not required for either encounter.

2. Offense within Officer's Presence or View

State v. Steelman, 93 S.W.3d 102 (Tex.Crim.App. 2002)

The odor of burned marijuana emanating from a residence, coupled with an anonymous tip that drug dealing was taking place at that residence, did not give police officers probable cause to believe that the person who opened the door of the residence had committed an offense in the officers' presence, and thus the officers were not permitted to enter and arrest everyone inside the home.

3. "The Hot Pursuit Doctrine"

Yeager v. State, 104 S.W.3d 103 (Tex.Crim.App. 2003)

Under the "hot pursuit" doctrine, the relevant consideration is whether the initial pursuit was lawfully initiated on the ground of suspicion.

4. Search Incident to Arrest

McGee v. State, 105 S.W.3d 609 (Tex.Crim.App. 2003)

Appellant argued that the crack cocaine retrieved from between his buttocks during a visual body cavity inspection was the product of a warrantless arrest and the fruit of an unconstitutional search. Warrantless arrests are permitted only when probable cause for the arrest exists and at least one of the statutory exceptions to the warrant requirement is met. When coupled with officer's prior knowledge supplied by informant, the officer's observations were sufficient to provide probable cause for warrantless arrest of defendant for drug offense committed in officer's presence or within his view. The informant had provided the officer with a detailed description of the appellant, his location, his name, and names of his companions. The informant was concerned that appellant was selling crack cocaine and hiding it between his buttocks. Upon arriving at the scene, the officer observed appellant and companions, all of whom matched informant's description, with marijuana smoke in air, and a marijuana cigarette on ground. The manner in which officer conducted a visual body-cavity search of defendant's anal area was reasonable, even though it may have been an uncomfortable experience for the defendant, and the officer conducting the search never had formal training in conducting cavity searches, where search was not violent, and officer had on-the-job experience while working with senior officers.

5. "Suspicious Places"

Dyar v. State, No. 1794-01 (4/23/2003)

Appellant was subject to a warrantless arrest in a hospital for suspected DWI. Affirming the Third Court of Appeals in Austin, the Court held that the arrest occurred in a "suspicious place." The Court's analysis ultimately centered on the totality of the circumstances in the particular case. "The determination of whether a place is a 'suspicious place' is a highly fact-specific analysis… Several different factors have been used to justify the determination of a place as suspicious. However, only one factor seems to be constant throughout the case law. The time frame between the crime and the apprehension of a suspect in a suspicious place is short… The time between the crime and the apprehension of the suspect in a suspicious place is an important factor."

B. Enhancements

Beal v. State, 91 S.W.3d 794 (Tex.Crim.App. 2002)

Overruling *Rener v. State*, 416 S.W.2d 812 (Tex.Crim.App. 1967), the Court held that an appealed prior conviction alleged for enhancement purposes becomes final when the appellate court issues its mandate affirming the conviction.

C. Waiver of Appeals

Monreal v. State, 99 S.W.3d 615 (Tex.Crim.App. 2003)

A valid waiver of appeal, whether negotiated or non-negotiated, will prevent a defendant from appealing without the consent of the trial court.

D. Trial Procedure; Scientific Evidence

Hernandez v. State, No. 2053-01 (6/4/2003)

Although appellate courts may take judicial notice of other appellate opinions concerning a specific scientific theory or methodology in evaluating a trial judge's *Daubert/Kelly* "gatekeeping" decision, judicial notice on appeal cannot serve as the sole source of support for a bare trial court record concerning scientific reliability.

E. Substantive Law; Theft

Simmons v. State, 109 S.W.3d 469 (Tex.Crim.App. 2003)

The face value of a check is presumptive evidence of its value.

F. Procedural Law; *Habeas Corpus*

Ex parte Schmidt, 109 S.W.3d 480 (Tex.Crim.App. 2003)

Article 11.09 of the Code of Criminal Procedure does not limit the jurisdic-

tion of the county court to issue the *writ of habeas corpus* to cases in which the applicant is confined.

III. Court of Appeals

A. Class C Misdemeanors

1. "Deferred Adjudication" is Not "Deferred Disposition"

Houston Police Department v. Berkowitz, 95 S.W.3d 457 (Tex.App.-Houston [1 Dist.]2002)

Berkowitz was charged with theft of property with a value of over $500.00 and under $1500.00, a Class A misdemeanor. Ultimately, he entered into a plea agreement with prosecutors, pleading no contest in a county criminal court at law to the reduced Class C misdemeanor of theft of an amount of less than $50.00. The court placed Berkowitz on deferred adjudication (Article 42.12, C.C.P.) for four months and fined him $100.00. In April 2001, Berkowitz was discharged from community supervision and the proceedings against him were dismissed. Subsequently, Berkowitz filed a petition for expunction of his arrest records in district court. He claimed he was entitled to expunction of his arrest record under Articles 45.051 and 55.01 of the Texas Code of Criminal Procedure. HPD and the Harris County District Attorney's Office both entered general denials. The district court granted the expunction petition and the State appealed. In denying Berkowitz's application for expunction, the First Court of Appeals explained that he was not entitled to expunction of his arrest records subsequent to receiving **deferred adjudication**, where defendant pled no contest to a Class C misdemeanor in a county criminal court at law and pursuant to information. Such an expunction is only available in Class C misdemeanor cases presented before a justice court or municipal court by complaint and even then, only in instances where defendants receive **deferred disposition.** Despite the fact the charge was plead down to a Class C misdemeanor, deferred adjudication is not the same as deferred disposition. Accordingly, Berkowitz was not entitled to an expunction.

2. Consequence of Class C Theft Conviction

Nelson v. State, No. 07-01-0425-CR (Tex.App.-Amarillo 2003)

Appellant was convicted of capital murder and appealed. The Seventh Court of Appeals held that while the evidence was sufficient to support the conviction, a prospective juror who had been convicted of a Class C misdemeanor theft was absolutely disqualified. Accordingly, the seating of the juror was a reversible error. The case was reversed and remanded.

B. Municipal Court

1. Ordinances; Constitutionality

Constitutionality of Ordinance; Commerce Clause

Shannon v. State, No 01-02-00400-CR (Tex.App.-Houston [1 Dist.] 2003)

The dormant commerce clause does not prohibit the City of Houston from passing an ordinance requiring transporters of non-hazardous waste to pay a flat fee to obtain the necessary licenses and permits required to pick up waste originating within the city limits. Appellant was convicted in municipal court of failing to obtain a transporter permit and operating a vehicle transporting waste that was not properly designated, and the municipal court assessed the minimum $250 fine on each charge. Appellant appealed to the county criminal court at law, which affirmed the municipal court convictions. The City of Houston, in an effort "to protect the public sanitary sewer system from unauthorized waste releases and to deter the discharge of waste into storm sewers, street right-of-way and other unauthorized places," passed a series of ordinances to regulate the transportation and treatment of certain non-hazardous wastes. Notably, only transporters originating in Houston are subject to the permit and license fee imposed by the city ordinance, thus undermining the allegation that such an ordinance violates the commerce clause. The First Court of Appeals thus held that the fees imposed relating to the transportation of non-hazardous waste are not internally inconsistent and bear a fair relation to the services provided by the city.

Constitutionality of "Queuing" Ordinance

Guevara v. State, 110 S.W.3d 178 (Tex.App.-San Antonio 2003)

The State appealed the judgment of the county court reversing defendant's conviction of San Antonio, Tex., Code of Ordinances Sec. 22-140(b), and holding that Sec. 22-140(b) was unconstitutional. The ordinance in question prohibits businesses located along the San Antonio Riverwalk from recklessly and unlawfully allowing patrons to queue on or wait for entrance into a cafe on the public right-of-way. Defendant argued that Sec. 22-140(b) failed to describe with reasonable certainty what actions constituted allowing patrons to queue on the public right-of-way, and that "to allow" was insufficient to establish intent for the purpose of charging a person with a penal offense. Affirming the decision of the county court, the Fourth Court of Appeals ruled that Sec. 22-140(b) was unconstitutionally vague because it criminalized a failure to act without informing those subject to prosecution that they must perform a duty to avoid punishment. Furthermore, the Court stated that the ordinance did not affirmatively impose on those subject to it the duty to adopt a particular system to prevent the queuing of patrons waiting for tables. Rather, it made an omission, the failure to prevent queuing, a crime merely by stating that the omission was an offense. (Note: The Texas Court of Criminal Appeals granted the State's petition for discretionary review in October 2003. TMCEC will continue to track future developments in this case.)

2. Chapter 45 Code of Criminal Procedure

Article 45.019(f) - Objections to Defects of Irregularities in Complaint

State v. Sanchez, No. 05-02-00717-CR (Tex.App.-Dallas 2003)

Defendant was charged with consumer affairs violation in the Dallas Municipal Court of Record. On the day the case was set for trial, defendant moved to quash complaint, and the municipal court granted the motion. The State appealed. The County Criminal Court of Appeals affirmed. The State appealed. The Court of Appeals, held that: (1) Article 45.019(f) of the Code of Criminal Procedure providing that a defendant waives the right to object to error in the charging instrument if no objection is made before the date on which trial commences, allows the judge to hear the motion to quash the criminal complaint on the day the case is scheduled for trial; and (2) the defendant's motion to quash criminal complaint was timely. Three members of the Court dissented, arguing that in order for objections to charging instruments to be timely, they must be raised before the day the trial is scheduled to commence, to provide an opportunity or sufficient time for the prosecution to correct the charging instrument before the trial is set to commence. (Note: The Texas Court of Criminal Appeals granted the State's petition for discretionary review in October 2003. TMCEC will continue to track future developments in this case.)

3. Appeals; Cities in Two Counties

Schedit v. State, 101 S.W.3d 798 (Tex.App.-Amarillo 2003)

Remanding the cause to the Randall County Court at Law for further proceedings, the Seventh Court of Appeals held that one appealing from a municipal court of record must generally appeal to a county criminal court, county criminal court of appeal, or municipal court of appeal. However, if those courts do not exist within the county, then the appellate court with jurisdiction over the matter is the county court at law. In this specific instance, since the boundaries of the City of Amarillo lie within the counties of both Randall and Potter, the legislature has expressly declared the county courts at law of both counties as the appellate courts with jurisdiction over an appeal. In other words, the appellant was entitled to appeal from the Amarillo Municipal Court of Record to either the County Court at Law of Randall County or those of Potter County. Accordingly, the Randall County Court at Law erred in dismissing (for want of jurisdiction) appellant's appeal from the Amarillo Municipal Court.

4. Sureties

Senter v. Hudson, 28 S.W.3d 153 (Tex.App.-Fort Worth 2000)

Appellant, who was convicted of three traffic offenses, filed appeal bonds with his parents as sureties. The Dalworthington Gardens Municipal Court of Record rejected the appeal bonds because the appellant's parents were not attorneys or licensed bail bond sureties. Appellant then filed a petition for *writ of mandamus*. The Tarrant County Criminal Court denied the petition. The Second Court of Appeal held that the municipal court erred in holding appellant's appeal bonds were insufficient and the trial court erred by denying appellant's petition for *writ of mandamus,* because a person not serving as a surety for hire or compensation was not disqualified from serving as a surety.

5. *Habeas Corpus* Relief

Ex parte Garrison, 47 S.W.3d 105 (Tex.App.-Waco 2001)

Defendant requested *habeas corpus* relief from county court at law. The request stemmed from alleged multiple legal violations in the Lacy-Lakeview Municipal Court. Specifically, the defendant claimed: (1) that the municipal court clerk was not properly qualified; (2) that his speedy trial right was violated; (3) that arrest warrants were invalid because he did not have proper notice of trial setting; and (4) that prosecution was barred by limitations. The Tenth Court of Appeals held that such arguments had to be raised by a motion to quash the complaints or a motion to dismiss for violation of his right to a speedy trial, rather than by a pre-trial *habeas* application. The *writ of habeas corpus*, like other extraordinary writs, will issue only when the applicant demonstrates that he has no adequate remedy at law.

6. Civil Law Suits

Whistle Blower Lawsuits

Rogers v. City of Ft. Worth, 89 S.W.3d 265 (Tex.App.-Fort Worth 2002)

Reversing the decision of the trial court, the Second Court of Appeals held that the Texas Whistleblower Act protects employees who report a violation of law at the direction of their supervisor rather than on the employee's own initiative. The employee was a temporary-duty deputy marshal of the city's municipal court. The underlying action arose when a judge allegedly directed the employee to write a report regarding another marshal's attempt to represent a defendant, in violation of the city code. The marshal was disciplined, but the employee was fired. On review, the employee challenged the trial court's decision that his report was not the type of activity that the legislature intended to be protected by the Act. The appellate court found that: (1) the deputy reported a violation of law for purposes of Act; (2) evidence supported finding that deputy's belief that he was reporting a violation of law was reasonable; (3) evidence supported finding that deputy reported violation in good faith; (4) evidence was sufficient to establish a causal link between report and termination; (5) evidence supported finding that deputy's alleged falsification of a customer survey report was not sole cause of termination; (6) evidence

supported award of $50,000 for mental anguish; and (7) report was made to an appropriate law enforcement agency.

Malicious Prosecution; Crime Stoppers Privilege; Constitutionality

In re Hinterlong, 109 S.W.3d 611 (Tex.App.-Fort Worth 2003)

After being acquitted in municipal court of minor in possession of alcohol, a local high school student sued school district, teacher, unnamed student informant, and unnamed person or persons who allegedly planted a water bottle with alleged small amount of alcohol in his vehicle, claiming malicious prosecution, defamation, and negligence arising out of an allegedly false crime stoppers tip that resulted in student's expulsion. Thereafter, student moved to compel discovery, seeking disclosure of informant's identity. The trial court denied motion. Student sought *mandamus* relief. On denial of motion for rehearing, the Second Court of Appeals held that: (1) *mandamus* was not barred for lack of due diligence; (2) the public high school's crime stoppers program qualified as a "crime stoppers organization," as defined by the crime stoppers statute; (3) informant's communication to a teacher that student had either drugs or alcohol in the trunk of his vehicle on school property was a privileged "crime stoppers tip;" and (4) application of statutory crime stoppers privilege violated open courts provision of State Constitution.

C. Trial Court Functions

1. Scientific Evidence; Radar

Masonet v. State, 91 S.W.3d 365 (Tex.App.-Texarkana 2002)

"Although *Kelly* modified the pre-existing scheme for determining the admissibility of scientific evidence, it also provides flexibility to courts to apply both generally accepted scientific principles and previous legal determinations. In light of society's widespread use of radar devices, and considering other courts' acceptance of radar, we view the underlying scientific principles of radar as indisputable and valid as a matter of law. Our holding today, however, does not mean radar evidence must not undergo rigorous scrutiny under both the second and third prongs of the *Kelly* test, only that the underlying scientific theory of radar is valid. The State must still establish that officers applied a valid technique and that it was correctly applied on the particular occasion in question."

2. Contempt

Ex parte Littleton 97 S.W.3d 840 (Tex.App.-Texarkana 2003)

To punish a person for constructive contempt, due process requires: (1) A written judgment of contempt, and (2) a written order of commitment. The commitment card cannot suffice as a commitment order because it does not set out the specific time, date, and place that the contemnor failed to comply with the Court's orders.

3. Expunction

Specialized Waste Systems, Inc v. State, No. 01-01-01179-CV (Tex.App.-Houston [1st Dist.] 2003)

Since corporations cannot be arrested, and in light of specific legislation to the contrary, a corporation may not petition for expunction of its criminal records.

D. Transportation Code

1. Turn Signal Usage

Reha v. State, 99 S.W.3d 373 (Tex.App.-Corpus Christi 2003)

When a turn is made, a signal is required regardless of the degree the vehicle is turning.

2. Fictitious Driver's License

DeLeon v. State, 105 S.W.3d 47 (Tex.App.-El Paso 2003)

A Sachse police officer stopped appellant's vehicle when he failed to signal a turn. Appellant identified himself as Orlando DeLeon and produced a driver's license bearing that name. Utilizing the driver's license produced by Appellant, the officer ran a computer check for warrants and learned that appellant had warrants for speeding tickets out of Garland, Texas. After confirming the warrants through the dispatcher, Heitjan arrested Appellant and transported him to the jail. On appeal, the Court of Appeals held: (1) sufficient evidence supported conviction, even though two driver's licenses found on defendant were duly issued by Department of Public Safety and had never been altered; (2) the statute prohibiting possession of fictitious driver's license did not define term "fictitious," and thus term had to be given its plain meaning; and (3) a driver's license which contains false information is a fictitious license.

E. Magistrates

1. Search Warrants; Authority to Issue

***State v. Acosta*,** 99 S.W.3d 301 (Tex.App.-Corpus Christi 2003)

Acosta was charged by indictment with the first-degree felony offense of possession with intent to deliver cocaine. Officers executed a search warrant that authorized the search of a specified residence for cocaine. A justice of the peace issued the search warrant. At this time, officers retrieved approximately 40 grams of cocaine. The trial court granted defendant's motion to suppress. The Court of Appeals held that the search warrant was a warrant for search and seizure of drugs, and not an evidentiary warrant. Thus, the evidence sought was obtainable by warrant issued by the justice of the peace.

2. Search Warrants; Sufficiency of Probable Cause

Serrano v. State, No. 03-02-813-CR (Tex.App.-Austin 2003)

Anonymous tip from a confidential informant stated that defendant, a 25-year-old Hispanic male, "is" dealing cocaine in the city and county area, was merely conclusory, and by itself, did not

establish probable cause to issue search warrant, where it did not show basis for informant's knowledge of crime, when or where crime was being committed, or when informant received information. Such a mere conclusory statement in an affidavit gives a magistrate virtually no basis at all for making a judgment regarding probable cause. Accordingly, where a search warrant affidavit fails to state when the affiant received the information from the informant, when the informant obtained his information, or when the described incident took place, the affidavit is insufficient to support the issuance of a search warrant.

3. Magistrate's Order of Emergency Protection; Constitutionality

Ex parte Flores, No. 08-01-00213-CR (Tex.App.-El Paso 2003)

There is a stigma attached to the issuance of a Magistrate's Order of Emergency Protection, as well as legal consequences, such as the fact that the Texas Family Code requires a court to consider the commission of family violence in making child custody determinations. While Article 17.292, C.C.P., does not provide for a cancellation or modification procedure, the availability of the *writ of habeas corpus* procedure affords one the opportunity to obtain an adversarial hearing to contest the emergency protective order. That ameliorates the *ex parte* nature of the procedure. Thus, Article 17.292 is constitutional.

F. Search and Seizure

1. Arrests Outside of City Limits

Dogay v. State, 101 S.W.3d 614 (Tex.App.-Hous. [1st Dist.] 2003)

Amendments to C.C.P. 14.03(g) and case law allow municipal and county law enforcement to arrest a person for a felony or misdemeanor offense, other than traffic violations, committed in his or her presence, anywhere in Texas, and are authorized for traffic violations occurring within the county where the officer is employed.

State v. Kurtz, 111 S.W.3d 315 (Tex.App.-Dallas 2003)

"We recognize the Fort Worth court has disagreed with the Waco court, holding a city police officer's jurisdiction remains "at least" countywide. Similarly, the Houston First Court of Appeals has held that a city police officer's jurisdiction remains countywide. The Fort Worth and Houston courts relied on the legislative history of Article 14.03, which was enacted at the same time the legislature repealed the language in the Local Government Code that allowed for countywide jurisdiction. According to these courts, the legislative history of Article 14.03 showed that the legislature's overall intent was to increase the geographic jurisdiction of city officers to make arrests to the entire State of Texas. Interestingly, Article 14.03(g) itself expressly limits its expansion of jurisdiction to arrest for offenses *other than traffic offenses* (emphasis added). Thus, while the legislature plainly intended to expand an officer's jurisdiction to arrest for offenses other than traffic offenses, the same cannot be said of its intent with respect to traffic offenses. Our sister courts nevertheless ignored that the legislature repealed the language that allowed for countywide jurisdiction. They did so by assuming the legislature could not have intended to reduce police officers' jurisdiction to arrest for traffic offenses while increasing their jurisdiction to arrest for other offenses. In light of the legislature's clear decision to treat traffic offenses differently from other offenses, we cannot agree with this assumption."

2. Inventory Searches

State v. Perez, 103 S.W.3d 466 (Tex.App.-San Antonio 2003)

A police officer was dispatched to a residence, where he found defendant arguing with his girlfriend. Defendant found another man with the girlfriend, and the girlfriend and defendant began to argue. Defendant had been drinking and refused to cooperate with police. The officer arrested defendant for public intoxication and asked other officers to collect defendant's personal property from defendant's vehicle. While inventorying defendant's property at the scene, an officer found cocaine in defendant's wallet. Defendant's vehicle was locked and left at the scene at defendant's request, while defendant and his property were taken to the police station. Defendant argued that the search of his wallet was unlawful, because his vehicle had not been impounded, and the search could not be justified as an inventory search. The appellate court held that the police action in locking and securing the vehicle at the scene was the same as towing the vehicle to the station, and the search was, therefore, a lawful inventory search.

3. Expectation of Privacy; Rental Vehicles

Pruneda v. State, 104 S.W.3d 302 (Tex.App.-Texarkana 2003)

Appellant testified he had permission from the person who rented the vehicle to consent to the vehicle's search. Nonetheless, appellant was prohibited by the terms of the rental agreement from driving the vehicle. Under the terms of the agreement, additional drivers were required to be listed on the rental agreement and to present their driver's licenses to the rental store for approval. Because appellant was not authorized under the terms of the rental agreement to drive this vehicle, he lacked standing to challenge the search of the vehicle.

4. "Plain Smell" Doctrine

Barocio v. State, No. 14-01-00944-CR (Tex.App.-Hous. [14 Dist.])

Reiterating the holding in Steelman, "we acknowledge the academic and judicial debate about the 'plain smell' doctrine. Nonetheless, it is merely an academic exercise for an intermediate court to initiate such a debate when the issue has

been decided by our state's highest criminal court."

5. Confessions (induced by *Capias Pro Fine*)

Murphy v. State, 100 S.W.3d 317 (Tex.App.-San Antonio 2002)

Appellant and a companion were the primary suspects in a triple homicide investigation. During the course of the investigation, a detective arranged an interview with appellant. Appellant agreed to meet at the police station for questioning. When appellant arrived at the police station, he was informed that he was a suspect in an unsolved triple homicide and was advised of his rights. Appellant stated that he understood his rights and would waive them to speak with the detective. During the subsequent interrogation, appellant denied any involvement in the homicides. After determining the homicide interview was going no where, the detective decided to arrest appellant. Unbeknownst to appellant, however, the detective arrested him on a municipal court *capias pro fine* warrant. The appellant subsequently confessed. The appellant, feeling duped, challenged the voluntariness of the confession. The San Antonio Court of Appeals held that it is not critical that a suspect know the charges to which he is susceptible before making a knowing and intelligent waiver of his privilege against self-incrimination.

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officer. A general-law city must hold an election pursuant to Chapter 25, L.G.C., if it wishes to adopt the city manager form of government.

Absent compliance with the procedures of Chapter 25, the city council of a general-law city will not have authority to appoint a city manager to administer the municipal business and exercise other authority conferred upon a city manager by Chapter 25, L.G.C. The governing body may not delegate to another person the authority as budget officer that Chapter 102, L.G.C., confers upon the mayor or the city manager appointed in compliance with Chapter 25, L.G.C. The mayor is expressly authorized to require other city officers to provide necessary information to him and may also delegate to city employees non-discretionary ministerial and administrative tasks necessary to carry out his statutory duties as budget officer.

JC-0549 (9/4/2002)

Whether Article 1.051 of the Texas Code of Criminal Procedure requiring that counsel for indigent criminal defendants be appointed within one day of the defendant's request in populous counties and within three days of the request in less populous counties, violates state and federal equal protection guarantees

A court would likely find that Article 1.051(c) of the Code of Criminal Procedure, as amended by the Texas Fair Defense Act, requiring that counsel for indigent criminal defendants be appointed within one day of the defendant's request in populous counties and within three days of the request in less populous counties does not violate the equal protection guarantees of the state and federal constitutions. The legislature has defined "indigency" and provided a flexible standard applicable to all counties for the purposes of appointing counsel to indigent defendants under Article 1.051. A court would likely find that the Article 1.051 indigency standard, because of its relative flexibility, does not violate, on its face, the state and federal guarantees of equal protection.

JC-0551 (9/4/2002)

Whether the term "two designated lanes of a highway," as used in Section 545.0651(b) of the Texas Transportation Code, may be construed to mean "two or more lanes"

Section 545.0651(b) of the Texas Transportation Code authorizes a municipality to "restrict, by class of vehicle, through traffic to two designated lanes of a highway in the municipality." The term "two" means precisely two and may not be construed to mean "two or more."

JC-0552 (9/4/2002)

Whether a county is required to establish a certificate of registration program for dangerous wild animals

The commissioners' court of every county that has not entirely prohibited the "ownership, possession, confinement, or care" of dangerous wild animals within its jurisdiction is required to have adopted, no later than December 1, 2001, an order "necessary to implement and administer the certificate of registration program" established by Subchapter E of Chapter 822 of the Texas Health and Safety Code. Sec. 822.116(b), H.S.C. A commissioners' court may not exempt, from the requirements of Subchapter E, any person or organization not specifically excepted under Section 822.102(a). Any resident of the county may bring an action in *mandamus* in a district court of the county to compel the commissioners' court to adopt the certificate of registration program.

JC-0554 (9/12/2002)

Whether a towing company may provide certain services for the owner of a parking facility

Section 684.082(a) of the Transportation Code prohibits a towing company from providing free of charge to the owner of a parking facility services such as roadside assistance or lot maintenance, including parking space striping and fire lane markings in connection with the removal of vehicles from a parking facility. The penalty attached to violations of Chapter 684 is applicable

to both parking facility owners and towing companies. Various local prosecutors are responsible for the enforcement of this statute in municipal and justice courts.

JC-0584 (11/26/2002)

Whether Chapter 57 of the Government Code requires the appointment of licensed court interpreters in certain circumstances

Chapter 57 of the Government Code applies to a plea in a misdemeanor case in justice court. A court clerk who merely converses with a defendant in a language other than English does not "act as a licensed court interpreter" within the meaning of Chapter 57. In either a civil or criminal proceeding, whether a party has filed a motion for or a witness has requested the appointment of an interpreter will depend upon the facts and is a question for the trial court in the first instance. The court may grant or deny such a motion or request. In a criminal proceeding, a court must also take into account the defendant's constitutional right to an interpreter and Article 38.30 of the Code of Criminal Procedure. Chapter 57 establishes qualifications for spoken-language interpreters appointed in criminal cases under the authority of Article 38.30.

If the only person who is licensed to interpret in a particular language resides in a distant location, a court in a populous county would be required to appoint that person. On the other hand, if there is no interpreter licensed to interpret in a particular language, the appointment of an unlicensed person may be within a court's inherent power.

Chapter 57 does not alter preexisting law on the payment of appointed court interpreters. It does not require counties to pay for spoken-language interpreters in civil cases. Courts retain their authority under the Rules of Civil Procedure and the Civil Practice and Remedies Code to fix an interpreter's compensation and to direct how an interpreter will be paid in civil cases. A county may not require a court to select an interpreter from an interpreter service under contract with the county, although a court may choose to do so.

GA-048 (3/27/2003)

Authority of a judge or magistrate to attach a financial condition to a personal bond or to permit a cash deposit of less than the full bail amount

A judge or magistrate may not attach a financial condition to a personal bond, or authorize the deposit of less than the full cash amount of bail. In light of the statutory language of Articles 17.02 and 17.03 of the Code of Criminal Procedure, as well as the holdings in *Professional Bondsmen* and *Ex parte Tucker* and of Attorney General Opinions *JM-363* (1985) and *JC-0215* (2000), we conclude that a court does not have the authority to attach a financial condition to a personal bond, or to permit or require a cash deposit of less than the full amount of the bail set. Article 17.15 of the Code of Criminal Procedure grants a court discretionary authority to set the *amount* of bail, but not to require that bail be secured in a particular manner, or to impose conditions not contemplated by Chapter 17.

GA-061 (04/17/2003)

Whether certain unauthorized fees collected by counties and municipalities, that cannot be returned to the persons who paid the fees, constitute taxes that must be remitted to the Comptroller under Chapter 111 of the Tax Code or abandoned property governed by the Property Code

Fees collected by counties and municipalities pursuant to unauthorized pretrial diversion agreements are not taxes governed by Chapter 111 of the Tax Code. Counties and municipalities must administer abandoned fees and interest earned on the fees pursuant to Chapters 74 and 76 of the Property Code. Attorney General Opinion *JC-0463* (2002) is modified to the extent it suggests that abandoned fees must always be reported and delivered to the Comptroller pursuant to Chapter 74 of the Property Code.

GA-067 (5/3/2003)

Authority of a municipal judge to examine the state's witnesses if the State is not represented by counsel when the case is called for trial

A municipal judge does not have the authority to examine the State's witnesses if the State is not represented by counsel when the case is called for trial. The Texas Rules of Evidence do not authorize a municipal or justice court to call and examine witnesses when a State's attorney is not present. Nor does the common law provide support for a municipal or justice court's authority to call and examine witnesses when a State's attorney is not present at trial. While they have not answered the precise question presented here, Texas courts have regularly disapproved of judges examining witnesses as a general practice. The concern is most acute in a jury trial because of the danger that a court's questions could influence a jury's decision.

Also, whether trial is to a jury or to the court, when a court examines witnesses, it risks "becoming an advocate in the adversarial process and losing the neutral and detached role required for the fact finder and the judge." Courts in Texas have but limited authority "to question a witness when seeking information only, to clarify a point, or to get the witness to repeat something that the judge could not hear." That authority does not go so far as to permit a court to call and examine the State's witnesses at a trial without an attorney for the State.

GA-089 (7/29/2003)

Whether Occupations Code, Section 1704.304, providing that certain persons may not recommend a bail bond surety, an attorney, or a law firm to a criminal defendant,

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ETHICS UPDATE

Examples of Improper Judicial Conduct

The following are examples of judicial misconduct that resulted in disciplinary action by the Commission in Fiscal Year 2003. These are illustrative examples of misconduct and do not represent every disciplinary action taken by the Commission in Fiscal Year 2003. 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 discipline may be requested by contacting the Commission at P.O. Box 12265, Austin, TX 78711-2265; telephone 512/463-5533 or tollfree 877/228-5750.

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 2003. 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 failed to comply with the law by issuing a court order without authority in a matter over which his court had no jurisdiction. [Violation of Canon 2A, Texas Code of Judicial Conduct and Article V, Section 1-a(6)A, Texas Constitution.] *Public Reprimand of Justice of the Peace Bennie Ochoa, III (12/17/02).*

• The judge used $40.00 of county funds for his personal use to pay a lawn mowing service when his personal check was not accepted. The judge repaid the funds after the county auditor brought the matter to his attention. Further, the judge frequently discussed pending judicial matters, including his intended rulings, in public. [Violation of Canon 2A and 3B(10), Texas Code of Judicial Conduct and Article V, Section 1-a(6)A, Texas Constitution.] *Public Reprimand of Former Justice of the Peace Steven B. Duke (06/27/03).*

• The judge violated the Texas Code of Criminal Procedure by issuing an arrest warrant and magistrating a defendant in a matter in which the judge was the victim. By these actions, the judge failed to follow proper procedures and demonstrated a lack of professional competence in the law. [Violation of Canons 2A and 3B(2), Texas Code of Judicial Conduct.] *Public Admonition of Municipal Court Judge Alberto Martinez (06/27/03).*

• In adjudicating a truancy matter, the judge improperly applied certain provisions of the Texas Education Code and the Texas Code of Criminal Procedure, while failing to comply with other applicable or mandatory provisions of those statutes [Violation of Canons 2A and 3B(2), Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Justice of the Peace (10/29/02).*

• The judge allowed his small claims court to be used as a collection agency for a party who had been issued a civil judgment by the judge. The judge also improperly handled the conversion of a criminal complaint into a civil lawsuit, failed to properly notify the parties of this action, and entered a judgment that included a "Payment Agreement," which ordered a civil litigant to pay her judgment debt through the judge's office. [Violation of Canons 2A and 3B(2).] *Public Warning and Order of Additional Education of Oscar Tullos, Justice of the Peace (06/27/03).*

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

• The judge held a formal press conference in his courtroom while wearing his judicial robe, publicly criticizing an attorney for what the judge perceived as misconduct in a high-profile case pending in a second judge's court. The press conference was

held during a period of intense media attention directed at the second judge, who had just recused himself from the case amid allegations of judicial misconduct. Following his press conference, the judge sent an e-mail to numerous friends, family and colleagues, in an attempt to explain his decision to hold the press conference. The Commission conducted formal proceedings and a public trial. The judge was found to have engaged in willful conduct that violated the Code of Judicial Conduct, by allowing a relationship to influence his conduct and judgment and by lending the prestige of judicial office to promote the private interests of the judge and others. [Violation of Article V, Section 1-a(6)A, Texas Constitution and Canon 2B, Texas Code of Judicial Conduct.] *Public Censure of Former County Court at Law Judge Robert Jenevein (01/17/03).*

• The judge called another judge on behalf of the daughter of a county commissioner, regarding a traffic citation the woman had received. The Commission determined that the judge abused his judicial position in an effort to influence another judge's decisions and obtain favorable treatment for the daughter of a county commissioner. [Violation of Canon 2B, Texas Code of Judicial Conduct.] *Public Warning of Justice of the Peace Jose Canales (06/27/03).*

• The judge lent the prestige of his office by displaying on his office door a poster stating, in bold letters, "Re-Elect '98," and containing caricatures and names of several individuals who were either holding or running for elective office in the judge's county. [Violation of Canon 2B, Texas Code of Judicial Conduct.] *Public Admonition of Justice of the Peace Bennie Ochoa, III (12/17/02).*

• On behalf of his daughter, a district judge wrote a letter of representation on official court stationery to a municipal court. In this letter, the judge entered a plea of "not guilty" for his daughter, and sought the name of the prosecuting attorney "for possible plea negotiations." [Violation of Canon 2B, Texas Code of Judicial Conduct.] *Private Admonition of a District Judge (06/13/03).*

• The judge voluntarily appeared in his judicial robe in an advertisement for Southwestern Baptist Theological Seminary that was published in a newspaper. The Commission concluded that the judge lent the prestige of his judicial office to advance the private interests of the Seminary. [Violation of Canon 2B, Texas Code of Judicial Conduct.] *Private Warning of a County Court at Law Judge (12/28/02).*

• The judge lent the prestige of his judicial office to advance his own private interest by sending a letter to two assistant district attorneys, urging the imprisonment of a particular criminal defendant with whom he had a personal dispute. In the letter, written on his law firm stationery, the judge made a special point of noting his position as a judge, and used the title "Judge" before his name in the letterhead to identify himself. [Violation of Canon 2B, Texas Code of Judicial Conduct.] *Private Admonition of a Municipal Court Judge (02/28/03).*

CANON 3B(2): A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

• The judge failed to obtain the required hours of mandatory judicial education for Fiscal Year 2002. [Violation of Rule 3a(2), Texas Rules of Judicial Education, and Canons 2A and 3B(2), Texas Code of Judicial Conduct.] *Public Reprimand of Former Justice of the Peace Kathryne Gabbert (04/10/03).*

• In resolving a matter involving the defendant's failure to show proof of liability insurance, where the defendant subsequently timely provided such proof to the court, the judge charged a $35 "insurance dismissal fee," although such fee is not allowed by law. [Violation of Canon 3B(2), Texas Code of Judicial Conduct.] *Private Admonition of a Municipal Court Judge (08/07/03).*

• The judge improperly exercised his contempt authority by failing to serve the alleged contemnors with proper legal process, and by failing to provide them with full and unambiguous notification of when, how, and by what means they had been guilty of contempt. The judge also failed to properly admonish the defendants about proceeding without counsel at the contempt hearings when they faced the possibility of a jail term. He also failed to obtain the defendants' knowing and voluntary waiver of counsel, before finding them in contempt and ordering them to jail. Further, the judge failed to provide proper notice to the parent or guardian of a minor charged with a criminal offense, as required by Texas Code of Criminal Procedure, Art. 45.0215. The judge's actions in exercising his contempt authority, and his procedures involving a minor charged with a criminal offense, demonstrated a lack of professional legal competence. [Violation of Canon 3B(2), Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace (02/14/03).*

• The judge failed to obtain mandatory judicial education hours as required by Rule 4(a)(1) of the Texas Rules of Judicial Education. [Violation of Canons 2A and 3B(2).] *Public Admonition of Diana Rodriquez, Justice of the Peace (10/23/02)* and *Public Admonition of Elihu Dodier, Municipal Judge (10/23/02)*

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.

• In response to a sarcastic remark

made by an African-American court reporter, the judge joked "I would give you a black eye" for making that remark "if I could tell" by seeing it swell, or words to that effect. The Commission concluded that the judge's comment was insensitive and lacked the appropriate dignity expected of a judicial officer in his dealings with court staff. [Violation of Canon 3B(4), Texas Code of Judicial Conduct.] *Private Admonition of a Retired Senior Judge (12/17/02).*

• The judge berated a law enforcement officer with whom the judge dealt in an official capacity and threatened her with contempt. The Commission concluded that the judge's actions lacked the appropriate patience, dignity and courtesy expected of a judicial official. [Violation of Canon 3B(4), Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Justice of the Peace (06/13/03).*

• The judge failed to follow proper procedures when he ordered the arrest of a *pro se* defendant following a protective order hearing, without first reading the defendant his statutory warnings, and without affording the defendant the right to counsel, the right to waive counsel, or the right to remain silent. Additionally, the judge's frustration with the applicant's request to withdraw the request for a protective order resulted in a comment from the judge that suggested an unfavorable comparison between the defendant and Charles Manson, demonstrating a lack of patience, dignity, and courtesy. [Violation of Canons 3B(2) and 3B(4), Texas Code of Judicial Conduct.] *Private Order of Additional Education of a County Judge (06/27/03).*

CANON 3C(5): A judge shall not fail to comply with Rule 12 of the Rules of Judicial Administration, knowing that the failure to comply is in violation of the rule.

• A citizen requested several administrative judicial records from the judge pursuant to Rule 12 of the Texas Rules of Judicial Administration. When the judge did not respond, the citizen sought the assistance of the Office of Court Administration (OCA). A special OCA committee then sought the records, but the judge failed to respond to two separate requests. Citing the judge's lack of cooperation, the committee published an opinion against the judge, ordering him to tender the records to the citizen. Two months later, the judge complied with the citizen's request. The judge, who had served on the bench for 25 years, then resigned. In his responses to the Commission about the matter, the judge testified that he intentionally ignored the requests because the citizen had a long history of disruptive, bullying, and antagonistic behavior towards court staff. [Violation of Canon 3C(5), Texas Code of Judicial Conduct.] *Private Warning of a Municipal Court Judge (10/29/02).*

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

• The Commission was apprised of the judge's extra-judicial conduct, including that in 1977 he pled "no contest" to the offense of driving while intoxicated, he was convicted in 1984 of a federal misdemeanor offense of transporting illegal aliens from Mexico, and he was convicted in 1993 for violating federal migratory bird protection laws. Further, the judge, while acting in his judicial capacity, improperly magistrated his brother, improperly reduced a pending criminal charge; and unlawfully released certain criminal defendants on personal bonds although they were charged with aggravated felony offenses. Based on the judge's judicial and extra-judicial conduct, the Commission determined that the judge willfully engaged in conduct that casts public discredit upon the judiciary, the judge failed to comply with the law, allowed a relationship to influence his judicial conduct, failed to maintain professional competence in the law, failed to perform his judicial duties without bias or prejudice, and failed to conduct his extra-judicial activities so that they would not cast reasonable doubt on his capacity to act impartially as a judge or interfere with the proper performance of his judicial duties. [Violation of Article V, Section 1-a(6)A, Texas Constitution; Canons 2A, 2B, 3B(2), 3B(5), 4A(1) and 4A(2), Texas Code of Judicial Conduct.] *Public Censure and Order of Additional Education of Justice of the Peace Francis John Truchard (10/11/02).*

• The judge wrote and signed a letter on official court stationery to the superintendent and board members of the school district in his city. The letter contained several criticisms of these persons, including of their behavior and actions on certain controversial school district matters. The judge's letter was discussed publicly at a school board meeting and through the media. Because any dispute between the superintendent and school board could have resulted in a lawsuit being filed in the judge's court, the Commission concluded that the judge's public comments, expressed in his letter, constituted an extra-judicial activity which cast reasonable doubt on the judge's capacity to act impartially as a judge. [Violation of Canon 4A(1), Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a District Judge (10/25/02).*

CANON 4(I)(2): A judge shall file financial and other reports as required by law.

• The Texas Ethics Commission (TEC) notified the Commission that the judge, a candidate for reelection to the appellate bench, had failed to file several requisite campaign finance reports over the past two years, and that TEC had

fined the judge $20,500.00 for his inaction. The judge's failure to timely file the reports, along with the efforts of TEC and the Texas Attorney General's Office to collect the fines assessed against the judge, received statewide media attention during the election. In his testimony before the Commission, the judge acknowledged that he failed to timely file the campaign finance reports as required by the Texas Election Code. The Commission concluded that, as a judge and judicial candidate subject to the Judicial Campaign Fairness Act, the judge knowingly failed to timely file campaign finance reports as required by law. [Violation of Canons 2A, 4I(2) and 5(4), Texas Code of Judicial Conduct.] *Public Warning of Appellate Judge Paul Womack, Court of Criminal Appeals (6/27/03).*

Article V, Section 1-a(6)A, Texas Constitution: 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... .

• During two magistrations recorded on videotape at the jail, the judge cursed and verbally abused two defendants; the judge also directed a derogatory racial slur at one defendant and advised another that he had no rights. The Commission conducted a suspension hearing, and the judge gave testimony. Upon the Commission's recommendation, the Supreme Court of Texas suspended the judge from office without pay, pending final disposition of the complaint before the Commission, pursuant to the authority contained in Article V, Section 1-a(6)A, Texas Constitution and Rule 15(b), Procedural Rules for the Removal or Retirement of Judges. *Order of Suspension of Justice of the Peace Matt H. Zepeda (12/16/02).*

• The judge issued an invalid arrest warrant for a non-existent offense of "False Accusations" and used local police to place a person in custody after the judge was informed that there was no such criminal offense. [Violation of Article V, Section 1-a(6)A, Texas Constitution, and Canon 2A.] *Public Reprimand of Bennie Ochoa, III, Justice of the Peace (12/17/02).*

• In two complaints, plaintiffs' cases remained pending for years with no disposition as a result of a backlog of cases, disorganization, and other administrative problems among the judge's court staff. In a third complaint, the judge was found to have engaged in fiscal mismanagement by failing to fulfill his statutory obligation to deposit monies as required by the Local Government Code and the Code of Criminal Procedure. An auditor reported to the County Commissioner's Court that the judge's court had thousands of dollars worth of unposted receipts, numerous posting errors, and approximately $6,650.00 in missing funds. These audit findings indicated that similar findings and recommendations had been made to the judge on numerous occasions in the past. Further, it was determined that the judge failed to file monthly activity reports with the Office of Court Administration (OCA) since 2001, despite receiving notices that the reports were overdue. A follow-up audit reflected that receipts still were not being immediately given when payment was tendered, even after the judge became aware of the Commission's investigation. The Commission concluded that the judge persistently failed to maintain and monitor his civil court docket, and had failed to properly account for and deposit monies collected by his court and to timely file with OCA the required monthly activity reports. The judge's persistent failure to comply with statutory requirements in the Local Government Code, the Code of Criminal Procedure and the Government Code was clearly inconsistent with the proper performance of his duties. [Violation of Article V, Section 1-a(6)A, Texas Constitution and Canon 2A, Texas Code of Judicial Conduct.] *Public Admonition and Order of Additional Education of Justice of the Peace Juan Jasso (08/25/03).*

• While a patron at a local bar, the judge initiated a physical confrontation with another customer resulting in a criminal charge being filed against the judge for disorderly conduct, to which he entered a plea of no contest. The judge, who had consumed 4-6 beers in the hours preceding the incident, left the scene immediately after being told that the police had been called. The judge's conduct at the bar and the resulting criminal charge received local media coverage. [Violation of Article V, Section 1-a(6)A, Texas Constitution.] *Public Admonition of James Keeshan, District Judge (09/03/02).*

• In two complaints, plaintiffs' cases remained pending for years with no disposition as a result of a backlog of cases, disorganization, and other administrative problems among the judge's court staff. In a third complaint, the judge was found to have engaged in fiscal mismanagement by failing to fulfill his statutory obligation to deposit monies as required by the Local Government Code and the Code of Criminal Procedure. An auditor reported to the county commissioners' court that the judge's court had

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State Commission on Judicial Conduct

October 2003

Interim Executive Director
Seana Willing

Dear Judge:

There are approximately 3600 judges in Texas. This fiscal year, the Commission will receive over 1000 reports and complaints from civil and criminal litigants, attorneys, judges, legislators, law enforcement, concerned citizens, the media, and others placing the conduct of some of these judges at issue. In some cases, it may become necessary to involve you in our efforts to investigate allegations of misconduct. Please understand, however, that correspondence from the Commission is never intended to cause embarrassment or undue distress.

As we continue our efforts to investigate cases with care and discretion, we often come to the conclusion that some issues are best addressed by communicating directly with the subject judge early in the process, before other inquiries are made. Some of these communications will come in the form of a written inquiry. If that is the case, please be aware that case-related inquiries, invitations to hearings before the Commission, and all disciplinary actions are always sent by *CERTIFIED MAIL*. These documents, as well as dismissal and status letters are typically marked *CONFIDENTIAL*. General information and responses to your inquiries and other correspondence are sent by *REGULAR MAIL*.

If you have concerns that any correspondence from the Commission directed to your court address may cause courthouse gossip, embarrassment, or undue distress, we need your help. If you have an address, other than the court, where you would prefer to receive Commission correspondence, please complete the form below and return it to us at your earliest convenience so that we may update our records. We will use that designated address as our primary contact information for you in the future. If you prefer correspondence directed to your Court address, it is not necessary to complete the form below.

On a final note, please remember that we on the Commission staff are always available to discuss any issues or concerns you may have. Please feel free to contact us if you need additional information or assistance.

Sincerely,

Seana Willing
Interim Executive Director

PLEASE TYPE OR PRINT:

Name_____ **Court**_____ **County**_____

Preferred Mailing Address
For CJC Correspondence_____

Your Signature_____ **Date**_____

THE ABOVE INFORMATION IS FOR THE SOLE USE OF
THE COMMISSION ON JUDICIAL CONDUCT
IN ITS INVESTIGATIVE ACTIVITIES

P.O. Box 12265
Austin, TX 78711-2265

www.scjc.state.tx.us

(512) 463-5533
Toll-free (877) 228-5750

RESOURCES FOR YOUR COURT

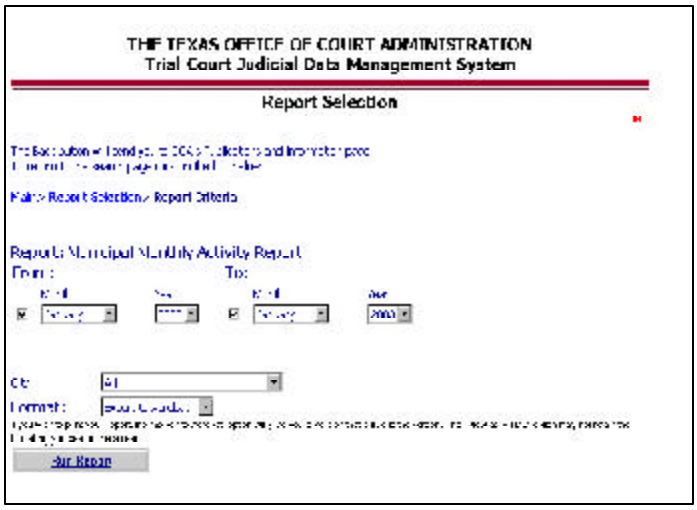
SCJC Annual Report

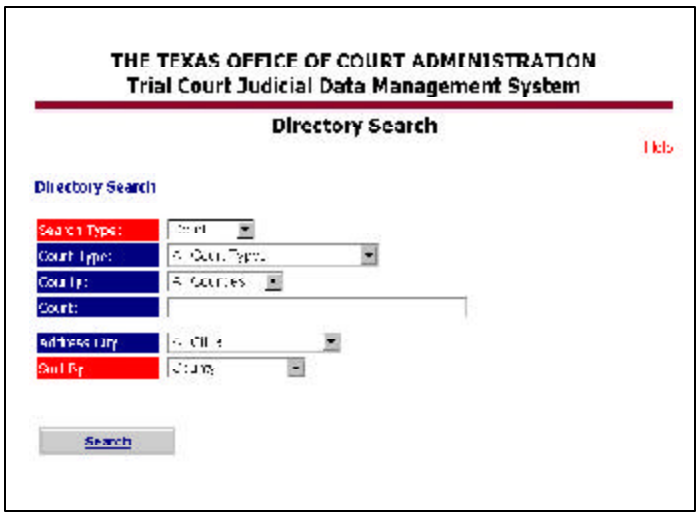
The *2003 Annual Report* of the State Commission on Judicial Conduct is available online: www.scjc.state.tx.us. Summaries of many of the FY 2003 private and public sanctions are included in this newsletter. The *Annual Report* indicates a rise in the number of disciplinary actions regarding municipal judges. Municipal judges make up 36 percent of the State Judiciary. In FY 03, eight percent of the cases filed with the Commission were concerning municipal judges. Regretfully, 22 percent of the Commission's disciplinary actions were issued against municipal judges. In past years, municipal judges have had a lower percentage--an average of 15.82 percent between 2000 and 2002.

OCA Annual Report

The *Annual Report of the Texas Judicial System* is available online at http://www.courts.state.tx.us/publicinfo/annual_reports.asp. Included in this newsletter on page 21 is summary information on all Texas municipal courts. In the online version, courts may compare their case disposition records and amount of revenue collected to those of nearby or similar sized cities.

Courts and the public can access all reported data from 1993 through the Texas Judiciary Online http://168.39.176.29/OCA/ReportSelection.aspx and can search the comprehensive online judicial directory: http://168.39.176.29/OCA/DirectorySearch.aspx. Interested persons can bring up the monthly reports of any court in Texas.





Courts are reminded that clerks are able to directly enter monthly reports online through the Internet. For a password and assistance, contact OCA staff at 512/463-1642.

Report of the Judicial Committee on Information Technology (JCIT), Fall 2003

The Fall 2003 JCIT Report is now published only in electronic form and is available on the JCIT website http://www.courts.state.tx.us. For more details, please visit the full Fall 2003 Report at http://www.courts.state.tx.us/jcit/Newsletters/Fall2003.pdf. Paper copies are available by calling 512/475-4776. JCIT/OCA has also coordinated the claim by courts of surplus computers available from the State of Texas Department of Information Resources. See claim form on page 18 of this newsletter.

Surplus Property Claim Form

Date: _____ County: _____

1. Name of Court: _____
2. Contact Person: _____
3. Contact Title: _____
4. Telephone Number: _____
5. Number of workstations needed: _____
6. Would you like a list of free software that's available for downloading from the Internet, including a suite of office programs that is compatible with and comparable to Microsoft Office? ___ Yes ___ No
7. Do you have internet access? ___ Yes ___ No
8. Is it dial-up or cable? ___ Dial-up ___ Cable E-mail address _____
9. Indicate the location most convenient for pickup by entering a "1" by the address below. In the event that supplies are exhausted at the preferred location, please select a second location by entering a "2".

Indicate Pickup Location	Address	Indicate Pickup Location	Address
	Austin		Houston

As soon as the computers are available for pick-up, OCA will send you a confirmation notice to inform you of the number of workstations reserved for your court. OCA will also provide instructions for pick-up or shipment of the equipment at that time.

The State of Texas Department of Information Resources contracts with vendors for best possible pricing on software and hardware. To view a product catalog, visit their website at http://www.dir.state.tx.us/store/index.html.

Thank you for your assistance.

Fax this form to: Office of Court Administration
205 W. 14th Street, Suite 600
P.O. Box 12066
Austin, Texas 78711-2066
Telephone: 512/463-1625
Fax: 512/463-1648
Attn: Maria Keenmon

Caseload Trends in the Municipal Courts
Analysis of Activity for Year Ended August 31, 2003

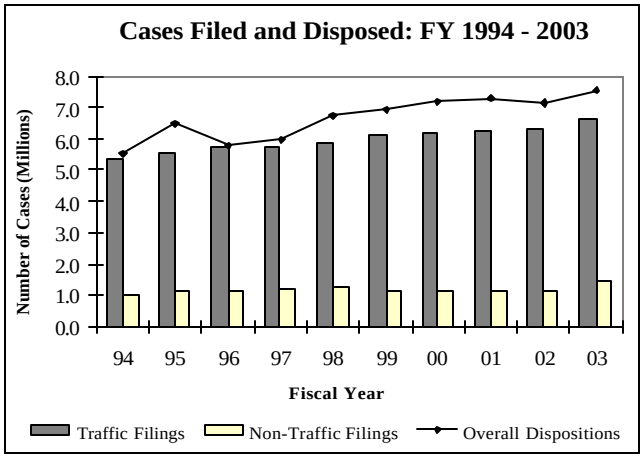
Background

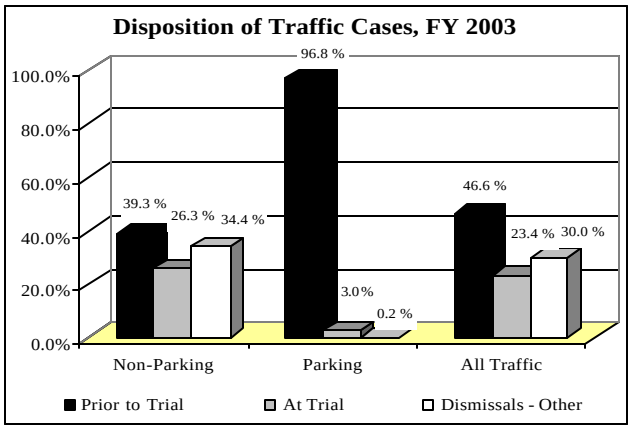
In FY 2003, municipal courts and municipal courts of record operated in 883 Texas cities. Municipal courts have original and exclusive jurisdiction over violations of city ordinances and resolutions, rules or orders of joint boards that operate airports under Section 22.074, Transportation Code and that are punishable by a fine not to exceed: 1) $2,000 in cases arising under ordinances or resolutions, rules or orders involving fire safety, zoning, public health, and sanitation; and 2) $500 in all other cases arising under a municipal ordinance or airport board resolution, rule or order.

In addition, municipal courts have concurrent jurisdiction with justice of the peace courts in misdemeanor cases resulting from violations of state laws within the city limits or property owned by the municipality located in the municipality's extraterritorial jurisdiction when punishment is limited to a fine and does not include confinement as an authorized sanction, pursuant to Article 4.14, Code of Criminal Procedure. Municipal courts of record may also have additional jurisdiction provided by local ordinance.

Filings and Dispositions

- Over the past ten fiscal years (FY 1994 to FY 2003), there has been a gradual increase in the overall number of new cases per year. In FY 2003, a total of 8,099,088 new cases were filed, 27.0 percent more than the 6,376,571 new cases filed during FY 1994. Over the past five fiscal years (FY 1999 to FY 2003), an average of 7,516,223 new cases were filed per year in the municipal courts.
- Traffic cases accounted for 81.9 percent (6,635,939 cases) of all cases filed in the municipal courts during FY 2003. Non-traffic cases comprised the remaining 18.1 percent (1,463,149 cases), which was a higher percentage than in any of the previous ten fiscal years. The ten-year (FY 1994 to FY 2003) average percentage of non-traffic cases filed per year was 16.5 percent.

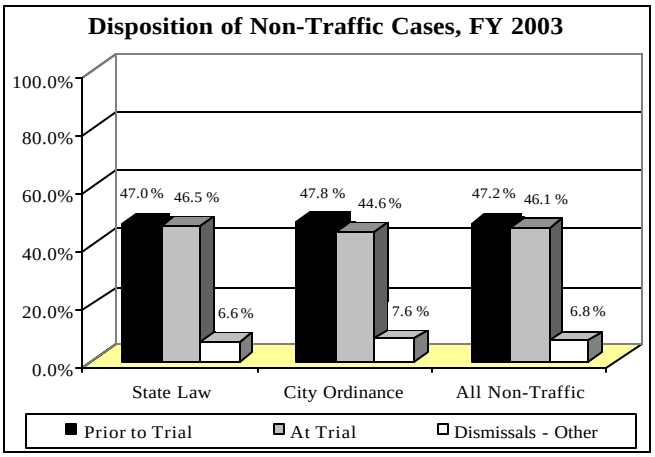




- Case filings in the eight largest metropolitan cities accounted for 45.1 percent of all municipal court filings in the state. In FY 2003, 3,649,548 cases were filed in Texas' eight largest cities—Houston, Dallas, San Antonio, Austin, El Paso, Fort Worth, Arlington, and Corpus Christi.
- In FY 2003, municipal courts disposed of 7,568,050 cases, which exceeded both the five-year (FY 1999 to FY 2003) average of 7,224,721 dispositions per year, as well as the ten-year (FY 1994 to FY 2003) average of 6,657,668 dispositions per year. Overall, there has been a gradual upward trend in the number of cases disposed in municipal courts over the past decade.
- During FY 2003, non-parking traffic cases accounted for the majority (75.2 percent or 5,693,650 cases) of all municipal court cases disposed. Parking cases comprised 11.0 percent (832,392 cases), non-traffic state law cases totaled 10.7 percent (813,040 cases), and non-traffic city ordinance cases accounted for the remaining 3.0 percent (228,968 cases) of all dispositions during the fiscal year.
- Approximately 47 percent (3,533,462 cases) of all municipal court cases disposed in FY 2003 were disposed prior to trial. Of the 3,533,462 traffic and non-traffic cases disposed prior to trial, 83.5 percent involved payment of a fine or forfeiture of a deposit made to ensure appearance.
- The percentage of non-traffic cases disposed at trial (46.1 percent, or 479,996 cases) in FY 2003 was nearly equivalent to the percentage of non-traffic cases disposed prior to trial (47.2 percent, or 491,355 cases). In contrast, only 23.4 percent (1,524,309 cases) of traffic

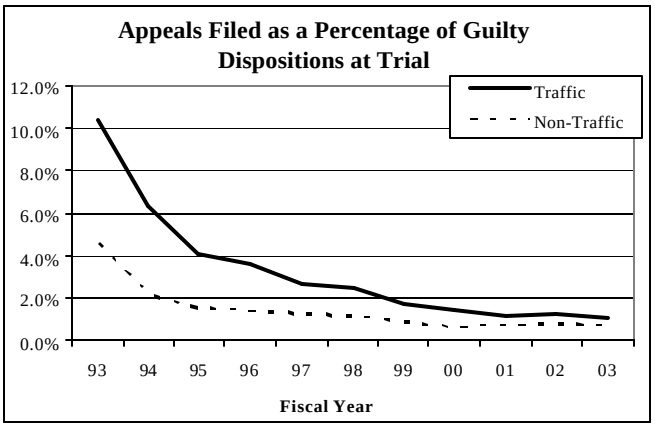
cases were disposed at trial during the fiscal year.

- The average municipal court clearance rate (total cases disposed divided by total cases added) for FY 2003 was 93.4 percent, which was the lowest rate for any year since FY 1997. The five-year (FY 1999 to FY 2003) average clearance rate was 96.1 percent, while the ten-year (FY 1994 to FY 2003) average clearance rate was 93.1 percent.

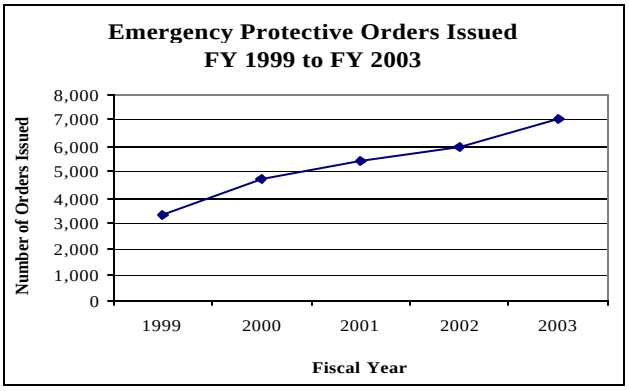


Other Activity

- In FY 2003, guilty findings were made in 98.2 percent (1,175,472 cases) of the 1,197,564 bench trial cases that were not dismissed. In contrast, guilty verdicts were reached in 70.8 percent (3,295 of 4,651 cases) of jury trial cases that were not dismissed.



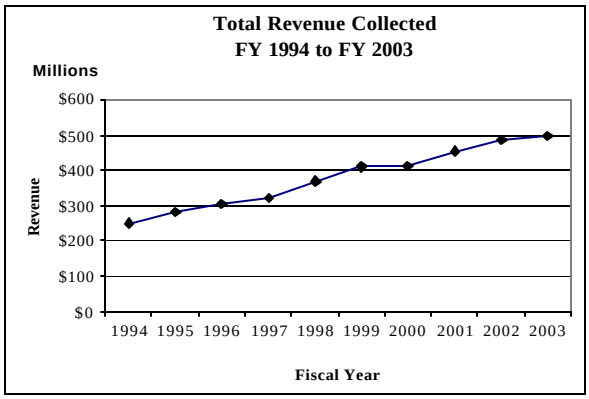
- Of all cases in which a finding of guilt was reached at trial by judge or jury (1,178,767 cases), 1.1 percent (12,469 cases) were appealed, which continued an overall downward trend in the number of cases appealed since FY 1993. The five-year average (FY 1999 to FY 2003) percentage of cases appealed was 1.4 percent per year, indicating stabilization of the decreasing trend.
- Over the last five fiscal years, the number of emergency protective orders issued increased 110.9 percent (from 3,353 in FY 1999 to 7,071 in FY 2003), and the number of arrest warrants issued for felony and misdemeanor cases increased 9.9 percent (from 1,992,988 in FY 1999 to 2,190,291 in FY 2003).
- Juvenile case activity was greater in FY 2003 than at any time during the previous five fiscal years. In FY 2003, municipal courts handled 339,945 juvenile matters, 32.2 percent (109,595 cases) of which involved Transportation Code violations. The 72,466 Alcoholic Beverage Code cases filed during FY 2003 greatly exceeded the five-year (FY 1999 to FY 2003) average of 46,296 cases filed per year. The number of Failure to Attend hearings (29,376 hearings) and the number of Education Code violations filed (11,797 cases) also exceeded their respective five-year (FY 1999 to FY 2003) averages of 12,721 hearings held and 8,758 cases filed per year.



Revenue

The amount of revenue collected by municipal courts grew 97.8 percent over the last ten fiscal years (from $249,799,816 in FY 1994 to $494,194,876 in FY 2003). Excluding cases dismissed prior to or at trial, the amount of revenue collected in FY 2003 per disposition averaged approximately $80. Although municipalities collect this revenue, a portion of it is remitted to various special funds maintained by the state government.

Excerpt from FY03 Annual Report of the Office of Court Administration.



Activity Report for Municipal Courts

From September 2002 to August 2003

92.6 Percent Reporting Rate
9,811 Reports Received Out of a Possible 10,590

	Traffic Offenses		Non-Traffic Misdemeanors		
	Non Parking	Parking	State Law	City Ordinance	REPORTED TOTALS
NEW CASES FILED	5,562,535	1,075,371	1,208,877	254,772	8,099,088
DISPOSITIONS:					
Disposition Prior to Trial:					
Bond Forfeitures	47,553	1,005	11,777	2,147	62,485
Fines	1,854,919	674,729	289,235	70,049	2,888,939
Cases Dismissed	333,571	130,762	80,975	37,270	582,018
Dispositions at Trial:					
Trial by Judge:					
Guilty	881,850	16,802	218,538	57,782	1,175,472
Not Guilty	5,492	338	4,034	1,246	22,092
Trial by Jury:					
Guilty	2,222	52	643	334	3,295
Not Guilty	950	24	371	101	1,550
Dismissed at Trial	500,841	7,504	55,843	41,702	605,090
Cases Dismissed after:					
Driver Safety Course	462,443	0	0	0	462,443
Deferred Disposition	582,859	1,514	53,323	17,334	654,830
Proof of Financial Responsibility	510,537	0	0	0	510,537
Compliance Dismissal	102,473	0	0	0	102,473
Total Dispositions	5,593,550	832,392	813,040	228,968	7,568,050
COMMUNITY SERVICE ORDERED	155,385	800	35,515	7,631	199,336
CASES APPEALED	9,248	128	2,675	422	12,469

JUVENILE ACTIVITY:

Alcoholic Beverage Code Offenses Filed	72,406
DUI of Alcohol Offenses Filed	3,763
Health & Safety Code Offenses Filed	12,008
Transportation Code Offenses Filed	109,505
Failure to Attend Hearings	29,376
All Other Non Traffic Fine Only Offenses	99,208
Waiver of Jurisdiction of Non Traffic Cases	5,422
Education Code Violations Filed	11,797
Warnings Administered	3,095
Statements Certified	1,555

OTHER ACTIVITY:

Safety Responsibility and Driver's License Suspension Hearings Held	718
Search Warrants Issued	9,148
Arrest Warrants Issued:	
Class C Misdemeanors	2,130,509
Felonies and Class A and B Misdemeanors	59,782
Total Arrest Warrants Issued	2,190,291
Magistrate Warnings Given:	
Class A and B Misdemeanors	155,369
Felonies	71,057
Total Magistrate Warnings Given	229,426
Emergency Mental Commitment Hearings Held	1,138
Emergency Protective Orders	7,071
TOTAL REVENUE	494,194,870

(Excerpt from 2003 Annual Report of the OCA.)

Judicial Conduct continued from page 15

thousands of dollars worth of unposted receipts, numerous posting errors, and approximately $6,650.00 in missing funds. These audit findings indicated that similar findings and recommendations had been made to the judge on numerous occasions in the past. Further, it was determined that the judge failed to file monthly activity reports with the Office of Court Administration (OCA) since 2001, despite receiving notices that the reports were overdue. A follow-up audit reflected that receipts still were not being immediately given when payment was tendered, even after the judge became aware of the Commission's investigation. The Commission concluded that the judge persistently failed to maintain and monitor his civil court docket, and had failed to properly account for and deposit monies collected by his court and to timely file with OCA the required monthly activity reports. The judge's persistent failure to comply with statutory requirements in the Local Government Code, the Code of Criminal Procedure, and the Government Code was clearly inconsistent with the proper performance of his duties. [Violation of Article V, Section 1-a(6)A, Texas Constitution and Canon 2A, Texas Code of Judicial Conduct.] *Public Admonition and Order of Additional Education of Justice of the Peace Juan Jasso (08/25/03).*

• While traveling on a state highway at nighttime with his family, the judge chased, stopped, and arrested another motorist, based on the judge's perception that the motorist had committed a traffic offense, thereby presenting a danger to the judge and other motorists. During the incident, the judge displayed a handgun for which he was not licensed to possess. The Commission concluded that the judge engaged in "willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or the administration of justice." [Violation of Article V, Section 1-a(6)A, Texas Constitution.] *Private Warning of a Justice of the Peace (8/7/03).*

• In one matter, a driver attempted to resolve a traffic ticket in the judge's court by entering a plea of no contest with a request for deferred adjudication, and by paying the requisite fine and fees to the court. Over the next three months, the driver's mother contacted the court numerous times to find out the status of her son's ticket; each time she learned that the case was still open. Eventually, the driver's paperwork was processed correctly. In another matter, the commissioners' court of the judge's county complained that the judge engaged in fiscal mismanagement by failing to fulfill his statutory obligation to deposit monies as required by the Local Government Code and the Code of Criminal Procedure. A county auditor's report showed that the judge's court had thousands of dollars worth of un-posted receipts, thousands of unprocessed citations, late deposits, and receipts that did not match funds on hand. Further, the audit indicated that the court had not implemented a plan of action to correct similar problems cited in earlier audits. It was also determined that for more than two years, the judge had failed to file requisite monthly activity reports with the Office of Court Administration, contrary to the Government Code and despite receiving several notices that the reports were overdue. The Commission acknowledged that a subsequent audit found that the judge had made substantial progress in addressing the shortcomings found by the initial audit. [Violation of Article 5, Section 1-a(6)A, Texas Constitution, and Canon 2A, Texas Code of Judicial Conduct.] *Private Warning of a Justice of the Peace (08/25/03).*

• The judge requested and received a number of pre-signed "Marriage Waivers" from a retired district judge. Exercising his discretion, the judge thereafter executed these documents in order to allow couples to waive the 72-hour waiting period as provided by Section 2.204 of the Texas Family Code. There is no provision of law which allows a justice of the peace to execute a marriage waiver. The judge executed the marriage waivers without legal authority. [Violation of Canon 2A of the Texas Code of Judicial Conduct.] *Private Admonition of a Justice of the Peace (08/07/03).*

Adapted from 2003 Annual Report of State Commission on Judicial Conduct, pages 23-28. Includes several additional summaries provided by the Commission. The entire Annual Report will be included in TMCEC course materials and is available at www.scjc.state.tx.us.

A.G. Opinions continued from page 11

precludes those persons from furnishing a list of attorneys or bail bond sureties

The statute regulating bail bond sureties prohibits: (1) a bail bond surety from recommending an attorney or law firm to the surety's client, and (2) various public officers and employees of the jail and court systems from recommending a particular bail bond surety to another person. These provisions prohibit the affected persons from making *any* recommendations of attorneys, law firms, or bail bond sureties.

GA-101 (9/12/2003)

Whether a sheriff may contract personally to provide security to a private entity

The sheriff may not enter into a contract which would oblige him to provide security services at the behest of, and solely to, a private apartment complex. By its terms, Section 351.061 of the Local Government Code gives contracting authority to the commissioners' court, not the sheriff. The statute here follows the ordinary rule that "the general power to make contracts binding upon the county belongs to the commissioners' court." Tex. Att'y Gen. Op. No. *JC-0214* (2000) at 7. The sheriff, insofar as he is sheriff, is given no authority to enter into such a contract by Section 351.061.

CLERK'S CORNER

Read and Discuss the Canons!

By Margaret Robbins, Program Director, TMCEC

One question I always asked throughout my years with the Center is, "Has your judge talked to you about the Code of Judicial Conduct?" Sadly, I have only had a handful of clerks and court administrators who replied, "Yes." During the TMCEC *Ethics* class, I go over the Code of Judicial Conduct so that clerks understand that judges should be holding them to the same "…standards of fidelity and diligence that apply to the judge… ." See these requirements in Canon 3C(2). Hence, the clerks' actions and conduct could subject the judge to a complaint and sanctions. At the end of the class, I ask the clerks, "How important is it that clerks and administrators know and understand the Canons in the Code of Judicial Conduct?" They all respond, "Very important."

Although many judges do not supervise the day-to-day activities of clerks, they do have responsibility for some oversight of the court. The Code of Judicial Conduct requires judges in Canon 3C(1) to "…maintain professional competence in judicial administration and…[to] cooperate with other judges and court officials in the administration of court business." Therefore, clerks and judges should work together as a team to ensure that court business is conducted effectively and efficiently as required by Canon 3B(9). That Canon requires judges to dispose of all judicial matters promptly, efficiently, and fairly. Without clerks taking care of the day-to-day business of the court, judges would not be able to conduct judicial matters as required by Canon 3B(9).

In the General Counsel's column in this newsletter, Clay Abbott notes several public remands given to judges who have violated the Canons of the Code of Judicial Conduct. Recently, the Commission has sanctioned judges for racially offensive language and rude and discourteous behavior. Canon 3B(5) and (6). Subsection (6) also requires judges to "…not knowingly permit staff, court officials, and others subject to the judge's direction and control to do so [manifest bias or prejudice]." This means that judges should talk to clerks about how to communicate to defendants and others that come to court or call on the telephone for information.

Canon 3B(4) requires judges to "…be patient, dignified, and courteous to litigants… ." The Canon also requires clerks to conduct themselves in the same manner. Clerks see more defendants than judges do. At the end of a long and frustrating day, clerks must still be patient, dignified, and courteous.

The Commission on Judicial Conduct reprimanded a judge for failing to, "dispose of all judicial matters promptly, efficiently, and fairly." The judge used the excuse that the chief clerk quit and left a "big mess." The Commission on Judicial Conduct, however, still reprimanded the judge. The consequences of a clerk not properly handling court records and a judge not overseeing the clerk and the records, as can be seen by this reprimand, caused a judge to be sanctioned. Consequently, clerks should take great care of court records by making sure that all deadlines and timelines are being monitored and that cases are moving through the system in a timely manner. Court clerks are the custodian of court records and have a responsibility to the judge, defendants, and others that come into court to properly handle court records. The result of not doing so would probably mean chaos in court and defendants not treated fairly.

Even though many judges have not been diligent in discussing the Code of Judicial Conduct with their court clerks and administrators, the clerks should read and understand the Code of Judicial Conduct. If the clerk or administrator is a supervisor, every employee under his or her supervision should be required to read the Code of Judicial Conduct and sign that they have read it and understand it. Clerks and administrators should periodically discuss ethics and the judicial canons as a reminder of their professional responsibility to the court.

I have found that clerks and administrators take to heart what they learn at TMCEC classes. Their professional responsibility is also demonstrated by the fact that many clerks have become certified or are working on becoming certified under the Municipal Court Clerks Certification Program. Hooray for all our professional clerks and administrators!

COLLECTIONS CORNER

Amnesty 2004

By Don McKinley, Assistant Collections Specialist, Office of Court Administration

Hope everyone survived the holiday season! It's hard to believe 2004 is already upon us. Some of us may take a shot at another New Year's resolution, whether it is losing weight, reading more, taking up a new hobby, or maybe even improving **collections**. Now that you have had a good laugh, why not start off the year with a new focus on your court's collections effort? You may consider an amnesty program or a warrant roundup campaign during the year. Both amnesty and warrant roundups have similar goals, which include the following:

- disposing of outstanding cases;
- increasing court revenues;
- clearing outstanding warrants; and, most importantly,
- increasing compliance with the law and orders of the court.

Amnesty is defined by Webster's as *the act of an authority* (as a government) *by which pardon is granted to a large group of individuals.* Amnesty programs generally offer one or both of two forms of incentives: 1) a freedom incentive and 2) a financial incentive.

If you are considering an amnesty program for your court, take a moment to remember the message that may be inadvertently conveyed to defendants/offenders in your community. (We all know how the "word" gets out on the street). The message usually conveyed by an amnesty program is, "We have a financial deal for you—come on in to court." Does amnesty work? You bet. However, a question can be raised: why should we offer any financial incentive? Most defendants/offenders being targeted haven't paid their fines, fees, and court costs, so why should we cut them a deal or reward them for not handling their obligations? Actually, in cutting a deal, you just may hamper your future collection efforts, and the defendants/offenders may develop the mentality of waiting for next year's deal and amnesty.

So, is there a better way? We believe that a well-publicized warrant roundup campaign is a better alternative. Experience has shown that a coordinated warrant roundup campaign will prove to be more successful. It meets all the same goals listed above, and offers no financial incentive or give away. It maintains the effectiveness of the warrant as an enforcement tool for your court.

In July 2003, the City of Beaumont conducted its first warrant roundup campaign with great success. Deanna Davis, the court administrator, reported that court revenue for the month of July was $257,000, when compared to the average July revenue of approximately $90,000. This represented a 250% increase in revenue for the month. But it is not just about revenue. The main issue is compliance with orders of the court and respect for the justice system in your community. There is a clear message in the Beaumont area that warrants will be enforced and compliance with court orders is expected.

The City of Austin has held successful annual warrant roundups for the past three years. Rebecca Stark, the clerk of the Austin court, has been very proactive in the coordination of roundups and mass mailing campaigns (*i.e.*, sending warrant notices to defendants). Last year, the City of Austin was joined by 21 other entities, including the City of San Antonio. The annual warrant roundup campaign covered an area from Killeen to San Antonio along the I-35 corridor. Austin Municipal Court increased its revenue by approximately $750,000 during the roundup campaign month — the equivalent of an extra month of revenue for the court. In all, approximately $2.75 million in additional revenue has been collected from the roundups during the past three years. This year's campaign will also include the City of Temple and possibly Waco.

Both Ms. Stark and Ms. Davis state that the use of local media is crucial to a successful campaign. Local radio stations, newspapers, and television press coverage is key. You should use the media in smaller surrounding cities and, if you include surrounding communities and criminal justice agencies, your roundup becomes a bigger story. You may also be able to use your local cable bulletin board.

When planning a warrant roundup, it is important to get all parties involved and participating. Include local law enforcement — police department, sheriff, city marshal, county constable, and warrant officers. Input and support from your judges is very important. Be careful in selecting a date to kick off the roundup campaign. Based on experience, many

Amnesty continued on page 28

COURT SECURITY

Municipal Court Building Security Fund Revisited

By Jo Dale Bearden, Program Coordinator, TMCEC

Article 102.017, Municipal Court Building Security Fund, allows municipalities, if an ordinance is adopted, to collect a fee of $3.00 as a court cost from anyone convicted of a misdemeanor offense and spend these monies on court security.

More specifically, the Article states that the funds may be used to finance items used for providing services for buildings housing a municipal court as appropriate, including:

- purchase or repair X-ray machines and conveying systems;
- handheld metal detectors;
- walkthrough metal detectors;
- identification cards and systems;
- electronic locking and surveillance equipment;
- security personnel, including contracted;
- signs;
- confiscated weapon inventory and tracking systems;
- locks, chains, or other security hardware;
- purchase or repair bulletproof glass; and
- continuing education on security issues.

It is important to note the use of the term "including." As defined by the Code Construction Act (Chapter 311, G.C.), "including" is a term of enlargement and not of limitations, which broadens the possibilities of what courts may purchase.
Caveat: Document all court security fund purchases that are not listed in Article 102.017 or any purchase that collaterally benefits other departments within the city.

The Article goes on to state that the monies collected must be deposited into the municipal court building security fund. The term "fund" denotes that it has its own assets, liabilities, and equity accounts. Therefore, the money collected may not be combined with the general fund.

In a perfect world, all of the above take place as the legislature intended. City councils pass the ordinance, municipal courts collect the fee, the city deposits the monies into the court security fund, and the court spends the monies on much needed security equipment. Here in the real world, however, many courts are not collecting the fee, money from the fund is spent on non-court security related items, or money from the fund is not spent at all. What do you do if your court lives in the real world?

Scenario One:

The court is not collecting the fee because the city council will not pass the ordinance to collect the court security fund.

Why will the city council not pass the ordinance? The most common answer from courts is the city council does not want to add an additional fee on top of statutorily required court costs and fees. What they probably have not considered are the added benefits of a safe and secure court. Court employees (and possibly other city employees, if everyone is housed in the same building) produce a better work product if they feel safe and secure in their workspace. A municipal court has an obligation to provide a safe environment not only to its employees, but also to the members of the public who visit the court. A secure municipal court sends a strong message to the community and the defendants that the city takes the judicial function seriously, most likely resulting in higher collection rates. If the court security fee is not collected, the cities may be spending money on security out of the general fund—money that could be spent on other city needs. Lastly, security not only protects persons, it protects assets (money and property).

Scenario Two:

The court is collecting the fee, but the monies are being spent on non-court security related items.

Unfortunately, courts must also be aware of the politics that play out in the city environment and this scenario can turn venomous. Each court should decide how far they want to push this issue, keeping in mind that the court budget is always on trial. However, there are some options. Start with basics, present a copy of Article 102.017, C.C.P., to the city administration or request a written opinion from the city attorney regarding the Article. Request that the topic be discussed at the next city council meeting (getting it on the record, in the minutes).

Scenario Three:

The court is collecting the fee, but the monies are not being spent.

Again—a safe and secure court is a happy court. If this is your real world, remind those who hold the purse strings that the statute was created to provide money for court security so that the general fund is not used for security equipment. Discuss with them all of the benefits of having a safe and secure court. Have an outside party come in and do a security evaluation. Present that to those who determine the fate of court security with a plan of action. Most importantly, be persistent.

The intent of the municipal court building security fund is to provide funding for court security. Apparently, the legislature felt that municipal courts should prevent, as much as possible, the tragedies that some courts have experienced. In that, encourage your city to live in that perfect world where the city council passes the ordinance, municipal courts collect the fee, the city deposits the monies into the court security fund, and the court spends the monies on much needed security equipment.

Special thanks to Rene Henry, Project Manager, Office of Court Administration for his contributions to this article.

TMCEC FY04 Academic Calendar

Dates	School	Hotel/City	Address & Telephone
1/27-28/04	12-Hour Low Volume Judges/Clerks	La Posada **Laredo**	1000 Zaragoza Street 78040 956/722-1701
2/3-4/04	Court Administrators/ Bailiffs and Warrant Officers	San Luis Resort & Conference Center **Galveston**	5222 Seawall Boulevard 77551 409/744-1500
2/19-20/04	12-Hour Regional Judges/Clerks	Doubletree Lincoln Centre **Dallas**	5410 LBJ Freeway 75240 972/934-8400
2/25-27/04	Level III Clerk Certification Assessment Clinic	**San Marcos** Holiday Inn Select/ Aquarena Springs Meeting Center	108 IH35 North 78666 512/754-6621
3/10-11/04	12-Hour Low Volume Judges/Clerks	The Fredonia Hotel **Nacogdoches**	200 N. Fredonia Street 75961 936/564-1234
3/24-25/04	12-Hour Regional Judges/Clerks	Sofitel **Houston**	425 N. Sam Houston Pkwy 77060 281/445-9000
4/7-8/04	12-Hour Regional Judges/Clerks	Ambassador Hotel **Amarillo**	3100 I-40 West 79102 806/358-6161
5/4-5/04	12-Hour Prosecutors	Radisson Resort **South Padre Island**	500 Padre Blvd. 78597 956/761-6511
5/6-7/04	12-Hour Clerks **Wait List**	Radisson Resort **South Padre Island**	500 Padre Blvd. 78597 956/761-6511
5/10-11/04	12-Hour Attorney Judges **Wait List**	Radisson Resort **South Padre Island**	500 Padre Blvd. 78597 956/761-6511
5/12-13/04	12-Hour Non-Attorney Judges	Radisson Resort **South Padre Island**	500 Padre Blvd. 78597 956/761-6511
6/15-16/04	Special Topics Judges (*Magistrate*)/ Court Administrators	Hyatt Regency **Austin**	208 Barton Springs 78704 512/477-1234
6/24-25/04	Bailiffs and Warrant Officers	Inn of the Hills **Kerrville**	1001 Junction Highway 78028 830/895-5000
7/6-7/04	12-Hour Regional Judges/Clerks	Camino Real **El Paso**	101 S. El Paso Street 79901 915/534-3000
7/19-23/04	32-Hour New Judges/Clerks	Lakeway Inn **Austin**	101 Lakeway Drive 78734 512/261-6600
7/30-8/1/04	Level III Clerk Certification Assessment Clinic	Doubletree **Dallas** Campbell Centre	8250 North Central Exprsway 75206 214/691-8700

TMCEC 2003-2004 REGISTRATION FORM

Program Attending: _____ Program Dates: _____
[city]

❒ I will attend the pre-conference class on *Bond Forfeitures*. ❒ I will attend the *New Prosecutor Trial Advocacy* track at the Prosecutor Skills Seminar.

❒ Judge ❒ Clerk ❒ Court Administrator ❒ Bailiff/Warrant Officer* ❒ Prosecutor

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

Last Name: _____ First Name: _____ MI: _____
Names also known by: _____ Male/Female: _____
Position held: _____
Date Appointed/Elected/Hired: _____ 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 and two nights at the 12-hour seminars. To share with another seminar participant, you must indicate that person's name on this form.

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

Date arriving: _____ ❒ Smoker ❒ Non-Smoker

COURT MAILING ADDRESS

It is TMCEC's policy to mail all correspondence directly to the court address.

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

❒ Attorney ❒ Non-Attorney ❒ Full Time ❒ Part Time

Status: ❒ Presiding Judge ❒ Associate/Alternate Judge ❒ Justice of the Peace ❒ Mayor
❒ Court Clerk ❒ Deputy Clerk ❒ Court Administrator ❒ Bailiff/Warrant Officer*
❒ Prosecutor
❒ Assessment Clinic **(A registration fee of $100 must accompany registration form.)**
❒ Other: _____

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

Judge's Signature _____ Date: _____
Municipal Court of _____

I certify that I am currently serving as a municipal judge, city prosecutor, or court support personnel in the State of Texas. I agree that I will be responsible for any costs incurred if I do not cancel five (5) working days prior to the seminar. If I have requested a room, I certify that I live at least 30 miles from the seminar site and have read the cancellation and no show policies in the General Seminar Information section located on pages 16-17 in the Academic Schedule. Payment is required ONLY for the assessment clinics; payment is due with registration form. Participants in the assessment clinics must cancel in writing two weeks prior to seminar to receive refund.

_____ _____
Participant Signature **Date**

Amnesty continued from page 24

courts use the first Saturday in March, just as tax refunds are being mailed out and students are heading off on spring break. You should also release your warrant roundup kickoff date to the press about 2-4 weeks prior to your kickoff date. This will establish a deadline, generate interest, and serve as advance notice of the event to the community.

If you have an outside collections vendor, they will most likely want to be included and involved and send out their own letters. The court should also consider a mass mailing in which a special warrant roundup notice is mailed out to defendants with outstanding warrants. This notice should be different in color, design, wording, or tone from any other notices sent by the court to garner attention from the offender. Along with the impact of your press release and media attention, you may also want to include a telephone campaign to offenders with outstanding warrants in the weeks leading up to your warrant roundup.

Ms. Stark suggested there may be additional items you need to address with your warrant roundup, including:

- staff compensation for additional hours worked;
- press and media control; and
- higher attention and activity.

Be prepared for press questions about the number of cases you expect to close, how much money you expect to collect from the campaign, the number of total warrants outstanding, the number of arrests to be made by law enforcement, and the age of the cases outstanding. You may wish to stay vague on some of your answers, especially if you are conducting your first warrant roundup campaign.

Be prepared to have some fun. An effective, well-coordinated warrant roundup will generate additional revenue and workload for your court. The telephone calls, customer traffic, mail processed, and mail received by your court will all increase dramatically, especially in the final days leading up to the event. You may experience some internal teambuilding as staff members work close together to get the job done, and don't forget to reward them after the campaign with a pizza party or some other surprise for a job well done.

This may be the resolution you are looking for in 2004. If you would like additional information you may contact Deanna Davis, Rebecca Stark, and the Office of Court Administration at the telephone numbers listed below. Best wishes for a successful 2004!

Don McKinley, OCA-Assistant Collections Specialist 512/936-7557

Jim Lehman, OCA-Collections Specialist 512/936-0991

Russ Duncan, OCA-Assistant Collections Specialist 512/936-7555

Deanna Davis, Court Administrator - City of Beaumont 409/833-0555

Rebecca Stark, Clerk of the Court - City of Austin 512/974-4690

TEXAS MUNICIPAL COURTS EDUCATION CENTER
1609 SHOAL CREEK BLVD., SUITE 302
AUSTIN, TX 78701
www.tmcec.com

TMCEC MISSION STATEMENT

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

Change Service Requested