

# Municipal Court Recorder

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## Pay or Lay: *Tate v. Short* Revisited

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

The notion of debtor prisons conjures up Dickensian images of a bygone era, an era most of us have only visited in books. Yet, the U.S. federal government did not abolish imprisonment for debt until 1948.<sup>1</sup> While virtually all states followed suit, it is worth noting that incarcerating individuals for public debt, in contrast to private debt, has not historically been considered “imprisonment for debt.”

Incarceration for failure to pay a fine levied as criminal penalty dates back to 12<sup>th</sup> century England.<sup>2</sup> The U.S. Supreme Court has acknowledged that the imposition of fines, and the subsequent commitment of defendants who fail to pay fines, has achieved

nationwide acceptance in the American criminal justice system.<sup>3</sup>

The goals of the criminal justice system have historically been to punish and prevent criminal acts through retribution, deterrence, incapacitation, and rehabilitation. Fines are generally used as a deterrent. Criminologists advocating the imposition of fines have long touted that, unlike other forms of punishment such as incarceration, fines defray the cost of the criminal justice system and government itself.<sup>4</sup> Cost benefit analysis aside, the primary purpose of fines should not be to supplement government income. In Texas, the integrity of municipal and justice courts (local trial courts of

limited jurisdiction) has long been threatened by those who myopically see such courts purely as a source of revenue. Collectively, local trial courts generated over \$720 million in revenue for local and state government during fiscal year 2002.<sup>5</sup>

### History in the Making

From as early as 1890 until 1971, individuals convicted in a municipal or justice court who had insufficient resources to pay their fines or court costs were ordered to either pay all fines and costs or be committed to labor or jail:

*Pay or Lay continued on page 9*

## Legal Q & A: Removal from Office

By Scott Houston, Legal Services Director, Texas Municipal League

**Q:** What is the difference between a municipal court and a municipal court of record?

The Texas Constitution names the Constitutional courts of the State, ranging from the Supreme Court to the justice of the peace courts, and also provides that the Legislature may establish other courts that it deems necessary. Tex. Const. Art. V, Section 1. Pursuant to this authority, the Legislature enacted Chapter 29 of the Texas Government Code, which creates a municipal court in each Texas city and prescribes the court’s jurisdiction and procedures.

*Legal Q&A continued on page 12*

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## AROUND THE STATE

### An Important Reminder!

TMCEC has received a complaint from the General Counsel for the Mexican Consulate for Central Texas that a number of magistrates are still not in compliance with the terms of the Vienna Convention on Consular Relations. This issue has been discussed at the TMCEC judges seminars in the case law update course and in the TMCEC newsletter. Check the December 2000 issue of *The Municipal Court Recorder* ("The Vienna Convention: Questions and Answers").

If you do not have a copy of the *Magistrate's Guide to the Vienna Convention on Consular Relations* published by the Office of the Texas Attorney General, please contact the AG and request a copy at the number below. Alternatively, you can download it from the following link: [www.oag.state.tx.us/newspubs/publications.shtml#criminal](http://www.oag.state.tx.us/newspubs/publications.shtml#criminal) (note that you will need Adobe Acrobat). For further information, contact:

Assistant Attorney General David L. Garza  
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### TMCEC Legislative Updates

TMCEC will now provide housing at no charge at the TMCEC Legislative Updates in August 2003. Please see the notice on page 28 of this newsletter for more information.

### Budget Woes?

In this era of budget constraints, don't be "penny wise and pound foolish." Instead, take positive steps and use strategic planning to increase court revenues through proactive court collections programs. In order to help courts with this essential planning, TMCEC is sponsoring the 2<sup>nd</sup> Annual *Fines and Fees Collections & Enforcement Conference* in Corpus Christi on April 15-16, 2003. Municipal judges and court support personnel may attend with housing provided, no registration fees, and a travel allowance. For additional information, call TMCEC (800/252-3718), view the conference brochure online at [www.tmcec.com](http://www.tmcec.com), and see more information on page 29 of this newsletter.



# FROM THE GENERAL COUNSEL

## W. Clay Abbott

### Vienna Convention and Magistrates Revisited

In the December 2000 issue of the *Municipal Court Recorder* (available online at [www.tmcec.com](http://www.tmcec.com)), we published an article on the Vienna Convention authored by State Prosecuting Attorney Matthew Paul and our own Deputy Counsel Ryan Kellus Turner. My comments here are an update to that excellent piece.

A wonderfully complete guide to the Vienna Convention is available from the Texas Attorney General (see page 2 of this newsletter for ordering information). In basic terms, the Vienna Convention creates two rights for foreign nationals of the signing countries that impact criminal magistrates. The first is that foreign nationals have the right to be told they have the right to contact and communicate with their country's consular representative. The second right is that the consul be notified should the arrested individual so elect. The first duty naturally falls to magistrates, the second to the jail or detention facility staff at the magistrate's direction.

Since December 2000, the International Court of Justice has ordered the United States to stay the executions of three Mexican nationals on Texas and Oklahoma's death rows. National and international legal scholars are all debating issues of international treaties, federalism, clemency, and the ethics of the death penalty. On a more practical level, the U.S. State Department argues U.S.

compliance with the treaty based on federal efforts to educate the states on the rights of foreign nationals.

The legal issues discussed in the December 2000 *Recorder* have not appreciably changed. Acquittal or suppression of evidence cannot be based on violations of an international treaty. The practical issues also remain the same. First, as citizens of the United States, we all hope to be protected by treaties like the Vienna Convention; our failure to abide may encourage other countries to fail to abide to the detriment of Americans abroad. Secondly, as magistrates, it is our duty to protect and give notice of defendants' rights. Texas statutes make certain warnings mandatory, but omission from that list does not remove the right or the obvious policy rationale that citizens of foreign countries should be warned that they have the right to contact their nation's consular officials.

In addition to the World Court proceedings and international diplomatic efforts, the government of Mexico, through the General Counsel for the Mexican Consulate for Central Texas, has asked TMCEC to remind Texas magistrates of the rights Mexican citizens enjoy under that treaty. Please see the notice on page 2 of this *Recorder* for how to obtain the entire guide to the Vienna Convention prepared by the Texas Attorney General.

Regardless of the outcome of this international dispute or the U.S. response to the international and federalist issues, it makes good sense that Texas magistrates, including municipal judges, become familiar with

the Vienna Convention and include appropriate warnings to the citizens of other countries they see as magistrates. No valid argument can be made that apprising individuals of rights they possess is contrary to the public good or the administration of justice.

### Seat Belt Fines

At the request of the Texas Comptroller's Office, I need to address two situations that many may already know, but that many courts are still doing incorrectly. We addressed a similar issue in the March 2002 *Recorder* in an article called "A Matter of Semantics" concerning the creation of unauthorized local "fees," "expenses," or "charges." Now we are informed that many courts are making mistakes in the area of surrendering a portion of seat belt case fines to the State and in the application of special expense fees and fines in deferred disposition cases. For those of you that find you are not in error, thanks for reading. For those in error, these are important issues and we hope you can remedy the issues to avoid audits and embarrassing corrections by the Comptroller.

During the last session, three bills altered the statutes that create the offenses of Failure to Restrain a Child and Failure to Wear a Seat Belt. A twelfth-hour amendment to HB 1739 sought to fund a Tertiary Care Fund for treatment of children with head injuries. A bill creating such a fund had just failed due to lack of funding. The argument on the floor was that cities and counties would not lose funds by sending half of the newly increased fines to the fund. Despite the intent of the Legislature, the amendments had

inclusions in both Sections 545.412 and 545.413, Transportation Code, that require half of the fines collected under both sections be sent to the Texas Comptroller. Section 545.412 creates an offense involving child safety seats and calls for an increased fine of \$100 to \$200. Section 545.412(h) requires half of the fine be forwarded to the State. Section 545.413(b) creates an offense of failure to put a seat belt on persons under 17. Section 545.413(a) creates an offense of failure for a driver or front seat passenger to wear a seat belt. Fines for offenses under subsection (b) were raised from \$100 to \$200; fines for offenses under subsection (a) were left at \$25 to \$50. Fines for offenses under both subsections (a) and (b) have to be divided with the State under Section 545.413(j).

The clear language of the law requires the municipal court to send one-half of all child restraint cases and seat belt cases to the State of Texas. Since the language is clear, the intent of the Legislature is not relevant in interpreting the statute. Please make sure you are reporting and sending one-half of fines under both sections of the law for offenses involving Failure to Restrain a Child and Failure to Wear a Seat Belt.

## **Fines and Special Expense Fees in Deferred Disposition - An Ugly Duck Story**

The other procedure that many courts are applying incorrectly concerns the collection of court costs, fines, and special expense fees in deferred disposition cases. The problem often is not double collection but “counting our dispositions before they hatch.”

My modified example is the Ugly Duck story. An egg is laid and is sat on for a period of time. As an egg, we cannot ascertain its nature: could be a duck;

could be a swan. Finally, the period ends and one of two things emerges from the broken shell: a lovely swan or an ugly duck. (My apologies to ducks.)


Deferred disposition under Article 45.051, Code of Criminal Procedure, works in much the same way. At the birth of the deferred, the defendant must pay all court costs. Article 45.051(a) reads, “On a plea of guilty... and payment of all court costs, the justice may defer further proceedings... .” Clearly, like a plea or finding of guilt, payment of all costs is a precondition to granting deferred. The first condition that may be ordered during the period of deferral under Article 45.051(b)(1) is the posting of “... a bond in the amount of the fine assessed to secure payment of a fine.” The court clearly could not collect a fine, since it has chosen to defer finding the defendant guilty and ordering the payment of a fine. Likewise, Article 45.051(c) allows the court, “If the complaint is dismissed, a special expense not to exceed the amount of fine assessed may be imposed.” The use of the word “may” makes the collection of the special expense discretionary, but the special expense is collectable only upon dismissal.

Now the bond is allowed for payment of a fine, but not for payment of a special expense. This is easy to remedy if the defendant, when posting the bond, agrees therein to allow the bond to be applied to the special expense. It

becomes a matter of properly amending your bond form.

Like our hypothetical egg, the funds remitted by the defendant sit out the deferred period in the form of a bond. We do not know if the defendant will succeed and have the case dismissed or fail and have the court order payment of the fine assessed. Like the egg, we wait to find out if the bond becomes a special expense or a fine. Still we know that bond will be there to cover either outcome.

Since the defendant’s case cannot be resolved by both a judgment of guilt and a dismissal, it must follow that the court cannot order the payment of both a special expense fee and a fine. To collect both is prohibited by law, violates a defendant’s rights, and will result in being flagged in a Comptroller’s review.

Like we discussed in the earlier article, many courts add fees not authorized by law. No additional court cost may be assessed for granting deferred. Courts may, of course, raise or lower fines within the fine range for whatever non-discriminatory basis seen fit. The fine assessed in a deferred judgment could be larger or smaller than the fine for a similar charge in which a judgment ordering payment of a fine is rendered. It is important that the systematic assessing of fines not be referred to as imposing a fee or expense, since that is specifically prohibited by the law. 

### **TMCEC Legislative Update**

**Houston  
August 4, 2003  
Sofitel Hotel**

**Austin  
August 8, 2003  
Omni Southpark**

**Registration Fee: \$50**

**Register to attend  
using the Legislative  
Update form on page  
27 in this  
newsletter. If  
housing will be  
requested, use the  
registration form  
on page 31.**



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# Steps to Follow when a Foreign National Is Arrested or Detained

**Step 1.** It is imperative that the determination of citizenship be *on the record*. Courts of record should ensure that the court reporter records *all* information regarding determination of citizenship, advisement or rights, and actions taken. Courts not of record should record in the docket *all* information establishing citizenship, including the responses of the defendant, advisement or rights, and actions taken. In addition, warning forms should include Vienna Convention warnings in the event that a foreign national is arrested or detained.

**Step 2.** Determine the defendant's citizenship. This can be established by asking place of birth of the defendant, whether the defendant was born out of the United States, or whether the defendant has been naturalized under the Constitution and laws of the United States. In the absence of other information to the contrary, assume this is the country on whose passport or other travel document the foreign

national travels.

**Step 3.** If the foreign national's country of citizenship is *not* on the mandatory notification list beginning on this page:

⇒ Offer without delay, to notify the foreign national's consular officials of the arrest/detention. A suggested statement to the foreign national is found on page 7 of this newsletter. Translations of the statement into selected foreign languages are found in the *Magistrate's Guide to the Vienna Convention*.

⇒ If the foreign national asks that the consular notification be given, notify the nearest consular officials of the foreign national's country of citizenship without delay. Telephone and fax numbers to foreign embassies and consulates in the United States, are included in the *Magistrate's Guide*. Also, a suggested fax sheet for complying with the notification is found in the *Magistrate's Guide*.

**Step 4.** If the foreign national's country of citizenship *is* on the list of mandatory notification countries:

⇒ Notify that country's nearest consular officials, without delay, of the arrest/detention regardless of the foreign national's wishes. Telephone and fax numbers for the mandatory countries are included in the *Magistrate's Guide*. The suggested fax sheet found in the *Magistrate's Guide* may also be used to comply with the notification requirement to the mandatory countries.

⇒ Inform the foreign national that you are making this notification. The suggested statement for this situation is also found on page 7 in this newsletter.

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Adapted from *Magistrate's Guide to the Vienna Convention on Consular Notifications*, Austin: Office of the Attorney General, January 2000.

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## Mandatory Notification Countries and Jurisdictions

Antigua and Barbuda	Dominica	Malta	Seychelles
Armenia	Fiji	Mauritius	Sierra Leone
Azerbaijan	Gambia, The	Moldova	Singapore
Bahamas, The	Georgia	Mongolia	Slovakia
Barbados	Ghana	Nigeria	Tajikistan
Belarus	Grenada	Philippines	Tanzania
Belize	Guyana	Poland (non-permanent resident only)	Tonga
Brunei	Hong Kong <sup>2</sup>	Romania	Trinidad and Tobago
Bulgaria	Hungary	Russia	Turkmenistan
China <sup>1</sup>	Jamaica	Saint Kitts and Nevis	Tuvalu
Costa Rica	Kazakhstan	Saint Lucia	Ukraine
Cyprus	Kiribati	Saint Vincent and the Grenadines	United Kingdom <sup>3</sup>
Czech Republic	Kyrgyzstan		U.S.S.R. <sup>4</sup>
	Malaysia		

*continued*

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# Suggested Statement to Be Made to Foreign Nationals Who Are Arrested or Detained

Shown below is the English language version of the suggested notification statement. Statement One (1) is for use if consular notification is at the foreign national's discretion and Statement Two (2) is for use if consular notification is mandatory. Statement One (1) includes an additional sentence asking the foreign national to circle "yes" or "no" to indicate whether consular notification should be made. See page 7 in this newsletter for sample forms. The *Magistrate's Guide* contains the statement translated into 14 languages.

## Statement One (1):

### When Consular Notification is at the Foreign National's Option

As a non-U.S. citizen who is being arrested or detained, you are entitled to have us notify your country's consular representatives here in the United States. A consular official from your country may be able to help you obtain legal counsel and may contact your family and visit you in detention, among other things. If you want us to notify your country's consular officials, you can request this notification now or at any time in the future. After your consular officials are notified, they may call or visit you. Do you want us to notify your country's consular officials? *Please circle "yes" or "no."*

*Yes*

*No*

## Statement Two (2):

### When Consular Notification is Mandatory

Because of your nationality, we are required to notify your country's consular representatives here in the United States that you have been arrested or detained. After your consular officials are notified, they may call or visit you. You are not required to accept their assistance, but they may be able to help you obtain legal counsel and may contact your family and visit you in detention, among other things. We will be notifying your country's consular officials as soon as possible.

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### *Mandatory Notification Countries continued*

<sup>1</sup> Notification is not mandatory in the case of persons who carry "Republic of China" passports issued by Taiwan. Such persons should be informed without delay that the nearest office of the Taipei Economic and Cultural Representative Office ("TECRO"), the unofficial entity representing Taiwan's interests in the United States can be notified at their request.

<sup>2</sup> Hong Kong reverted to Chinese sovereignty on July 1, 1997, and is now officially referred to as the Hong Kong Special Administrative Region, or "SAR." Under paragraph 3(f)2 of the March 25,

1997, U.S.-China Agreement on the Maintenance of the U.S. Consulate General in the Hong Kong Special Administrative Region, U.S. officials are required to notify Chinese officials of the arrest or detention of the bearers of Hong Kong passports in the same manner as is required for bearers of Chinese passports — *i.e.*, immediately, and in any event within four days of the arrest or detention.

<sup>3</sup> British Dependencies also covered by this agreement are Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents

carry British passports.

<sup>4</sup> Although the U.S.S.R. no longer exists, some nationals of its successor states may still be traveling on its passports. Mandatory notification should be given to consular officers for all nationals of such states, including those traveling on old U.S.S.R. passports. The successor states are listed separately on page 5.

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Adapted from *Magistrate's Guide to the Vienna Convention on Consular Notifications*, Austin: Office of the Attorney General, January 2000.

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## Suggested Forms for Arrested or Detained Foreign Nationals

### ENGLISH

#### Statement 1

##### When Consular Notification is at the Foreign National's Option

As a non-U.S. citizen who is being arrested or detained, you are entitled to have us notify your country's consular representatives here in the United States. Do you want us to notify your country's consular officials? Please circle "yes" or "no."

YES

NO

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

### SPANISH

#### Statement 1

##### When Consular Notification is at the Foreign National's Option

Como no es ciudadano de los Estados Unidos, al ser arrestado o detenido tiene derecho a pedirnos que notifiquemos a los representantes consulares de su país aquí en los Estados Unidos, si lo desea. ¿Desea que notifiquemos a los funcionarios de su país?

YES (*Si*)

NO

\_\_\_\_\_  
Firma

\_\_\_\_\_  
Fecha

\_\_\_\_\_  
Firma

\_\_\_\_\_  
Fecha

### ENGLISH

#### Statement 2

##### When Consular Notification is Mandatory

Because of your nationality, we are required to notify your country's consular representatives here in the United States that you have been arrested or detained. We will be notifying your country's consular officials as soon as possible.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

### SPANISH

#### Statement 2

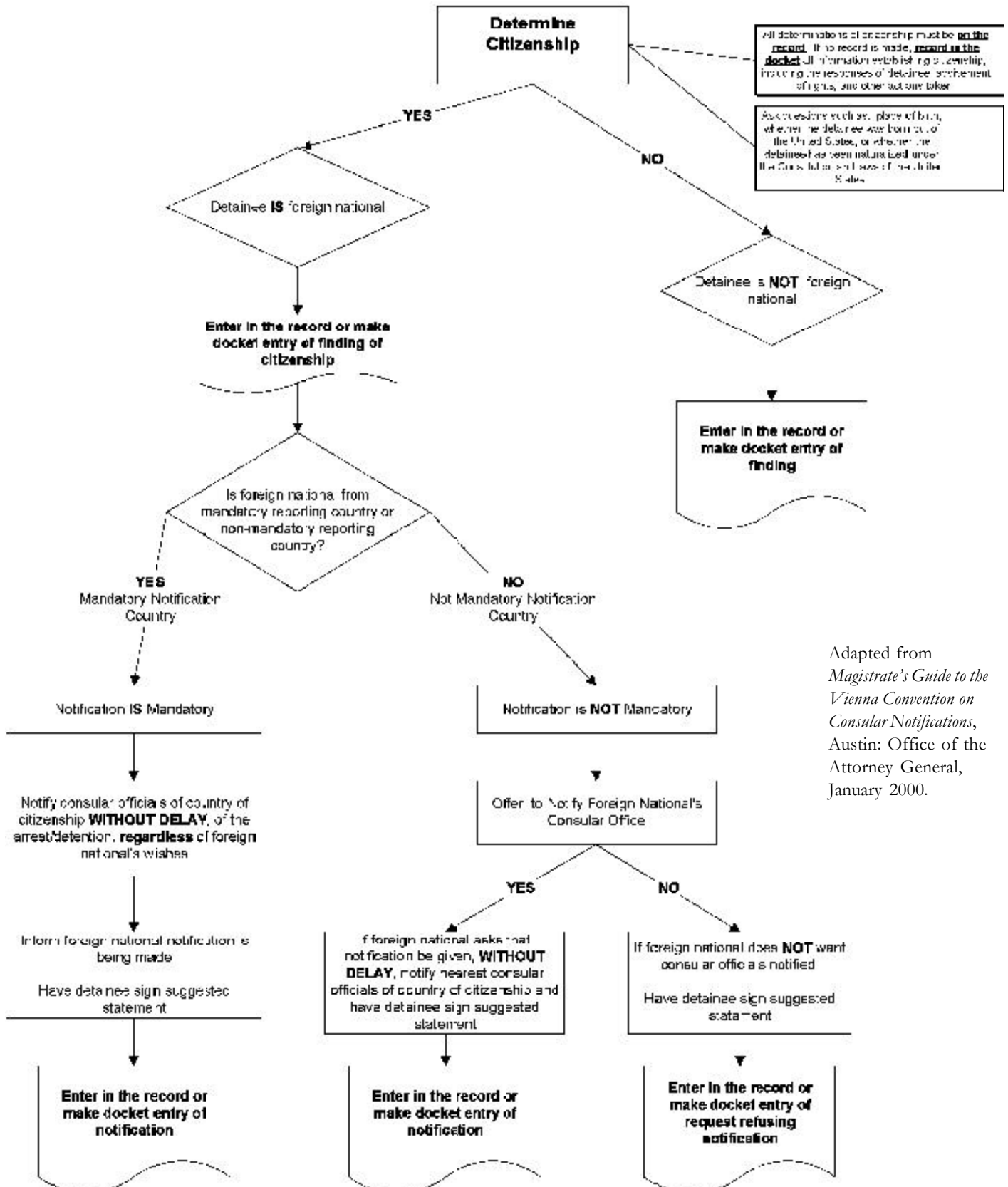
##### When Consular Notification is Mandatory

Debido a su nacionalidad, estamos obligados a notificar a los representantes consulares de su país aquí en los Estados Unidos que Usted ha sido arrestado o detenido. Notificaremos a los funcionarios consulares de su país tan pronto como sea posible.

\_\_\_\_\_  
Firma

\_\_\_\_\_  
Fecha

## Steps to Follow when an Individual Believed to be a Foreign National is Arrested or Detained



Adapted from  
*Magistrate's Guide to the Vienna Convention on Consular Notifications*,  
Austin: Office of the Attorney General,  
January 2000.



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# Warrant Officer/Marshal: Benefits vs. Cost

By Bret A. Woerz, City Marshal, Bryan

In the era of budget shortfalls, cutting personnel by attrition and laying off “non-essential” personnel, the municipal court has an asset that can keep revenue flowing into the court. This is the warrant officer/marshal position. A municipal court’s bounty is only limited by the assignment of peripheral duties and, of course, overtime budget constraints. The only other limit is the warrant officer/marshal. Is this officer a motivated self-starter who will utilize the time to its fullest potential? The warrant officer/marshal cannot be just “trying to make it to 20.” If the warrant officer is assigned to building duty, he or she can be researching and making contacts by telephone. Then, when field duty is assigned, he or she will be fully loaded to make personal contacts. Ultimately, this position can pay for itself two to three times over, or even more, in a year.

The City of Bryan is a small to medium sized municipal court. The Bryan City Marshal’s Office is comprised of three marshals. In 1999, there were three marshals and a chief. Each marshal recorded how many calls were made, the number of arrests, and the number of defendants that paid in the field or at the jail. The total dollar amount on warrants served by the Marshal’s Office was \$941,457.50. The actual dollar amount collected by the marshals was \$301,475.50 or about 32 percent of the total fines owed. The actual amount was not totally accurate because this did not account for payouts for arrested defendants that were done by the police department or the municipal court. These moved the percentage closer to 45 percent or possibly higher. The expenditure per marshal was about \$30,000 to \$33,000 in salary and benefits. This figure is an average as there was some salary differential due to longevity. In 2001, the Bryan Marshal’s Office had three on staff again for most of the year, serving \$544,940.75 in warrants and actually collecting \$180,884, a collection rate of about 33 percent. In the three and half years that we have tracked actual money collected, along with the warrant total, I have served \$1,007,851.75 and actually collected \$296,917.50.

Cities should not be too quick to look at the warrant officer/marshal and think “non-essential.” City managers and municipal court administrators should see this position as beneficial to the court and try to keep it active. The financial gain far outweighs the expense. ✍️

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## Pay or Lay continued from page 1

When a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine, if he is unable to pay the fine and costs adjudged against him, he may for such time as will satisfy the judgment be put to work in the workhouse, or on the county farm, or public improvements of the county, as provided in the succeeding Article, or if there be no such workhouse, farm or improvements, he shall be imprisoned in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against him...<sup>6</sup>

While the Court of Criminal Appeals upheld the constitutionality of labor or prison for the poor, it ruled that the

amount of jail credit earned could not be based merely on the population of the county.<sup>7</sup>

In 1969, Preston Tate was committed to the prison farm of the City of Houston by virtue of a *capias pro fine* stemming from six traffic convictions with aggregate fines totaling \$425. The Court of Criminal Appeals, in overruling Tate’s contention, held that Tate’s status as an indigent did not render him immune from criminal prosecution and that imprisonment was not unconstitutional merely because Tate was too poor to pay his traffic fines.<sup>8</sup>

The U.S. Supreme Court, however, disagreed. In reversing the Court of Criminal Appeals, it held that the Equal Protection Clause of the 14<sup>th</sup>

Amendment prohibits states from imposing a fine as sentence and automatically converting it to a jail term solely because the defendant is indigent and cannot pay the fine in full.<sup>9</sup>

*Tate v. Short* remains a milestone, not only in Texas, but also in American jurisprudence. By the time the case was remanded to the Court of Criminal Appeals, the Texas Legislature had already revised the judgment provision of the Code of Criminal Procedure to permit courts to order payments be made immediately, late, or in intervals. As a result of *Tate*, courts are now required to take into consideration the defendant’s economic resources and income.<sup>10</sup> Overruling a long line of

case law under *Tate*, indigent defendants may not be jailed without first allowing the defendant an alternative means of discharging the fine.

### Pay or Lay

Every area of the law has its own cryptic lexicon, terms, and phrases that only make sense to those who work within the particular area. Local trial courts in Texas are no different. Ask a district judge or a member of an intermediate or high appellate court to define “DSC” or a “birthday party,” and few would likely be familiar with the terms. Add to this list of obscure law slang “pay or lay.” Never heard the phrase? Well, it is probably a good sign if you haven’t. Simply stated, “pay or lay” describes the process where upon entering a judgment of guilty, the court orders the full amount of the fine and cost be paid, or that the defendant be committed to jail on a *capias pro fine* until he or she has earned sufficient jail credit to be discharged. This ultimatum from the court is given without regard to the financial status of the defendant.

In the aftermath of *Tate*, one would anticipate that the practice of “pay or lay” would have been relegated to the proverbial dustbin. However, in an anonymous electronic survey of Texas local trial court judges conducted by TMCEC, 24 percent of respondents admitted to having engaged in the practice.<sup>11</sup> The same survey revealed that 35 percent of judges polled knew of other municipal or justice courts that entered “pay or lay” orders.<sup>12</sup>

### Observations and Critique

The result of the TMCEC survey raises concern at a time that a number of local governments have found themselves in the headlines and in federal court facing civil right lawsuits.<sup>13</sup> Judges and other local government officials need to be increasingly aware of the holding in

*Tate* and vagaries of existing state law.

Legal commentators during the 1950s and 1960s repeatedly claimed that the imposition of fines against the poor frequently resulted in their legal, yet unjustified incarceration.<sup>14</sup> Yet, following *Tate*, the treatment of indigent defendants punished by the imposition of fines has largely escaped critical commentary.<sup>15</sup>

Without commenting on the motives, intent, or actions of the judges or local governments involved in current litigation regarding the alleged wrongful jailing of indigents, it is worth noting that the post-*Tate* statutes in Texas leave many questions unanswered. One explanation for this relates to the chronology of events following *Tate*. The U.S. Supreme Court heard oral arguments in *Tate* on January 14, 1971. The Court rendered its opinion March 2, 1971. Less than four months later, on June 15, 1971, the Texas Legislature amended a number of statutes including former Articles 45.50 (now 45.041), 45.51 (now 45.045), and 45.52 (now 45.046 and 45.047) of the Code of Criminal Procedure in light of the Supreme Court’s decision. Thus, by the time the Texas Court of Criminal Appeals reexamined the case on remand and issued its opinion on October 6, 1971, the new amended laws intended to remedy the Supreme Court’s critique were already in place. In its opinion, the Court of Criminal Appeals stated “it now appears that the Legislature has provided ‘alternative means’ for collection of fines from defendants in their revisions of [relevant portions of the Code of Criminal Procedure].”<sup>16</sup> The Court cited its opinion in *Ex parte Scott*, decided eight days after the new post-*Tate* legislative amendments had gone into effect. In *Scott*, the Court described the Legislature’s response as follows:

It appears that the Legislature has now provided this State with an

adequate remedy for the problem of the defendant who is unable to pay his fine in a lump sum at the time of the pronouncement of sentence, in their revision of Articles 42.15, 43.03, 43.04, 43.05, 45.50, 45.51 and 45.52 . . . . Under these amendments, the trial court may, when a defendant is to be fined, order the defendant to pay the entire fine and costs at the time of the pronouncement of sentence, order the defendant to pay the entire fine and costs at a later date, or order the defendant to pay specified portions of the fine and costs at designated intervals. The old statutes did not provide for delayed or installment payments; they required that the defendant pay the entire fine in a lump sum at the time of sentence or go to jail until he paid.<sup>17</sup>

But did the Legislature truly provide a comprehensive set of rules to adequately remedy problems raised in *Tate*? While *Tate* prohibited the practice of “pay or lay,” the Legislature’s response left many pertinent legal issues perilously unresolved. Certainly authorizing installment payments and payments at a later date was a step in the right direction. However, the judgment provision (Article 45.041(b)(1)(A), Code of Criminal Procedure) authorizes the court to order the entire fine and costs to be paid when the sentence is pronounced. The statute does not contemplate the issue of indigence. Thus, unless the judge knows that *Tate* prohibits converting the fine into jail time, it is possible that a judge ordering a lump sum payment could proceed to Article 45.045 and issue a *capias pro fine*. Article 45.045, Code of Criminal Procedure, states in part that “if the defendant fails to satisfy the judgment according to its terms, the court may order a *capias pro fine* issued for the defendant’s arrest. The *capias pro fine* shall state the amount of the judgment and sentence, and command the

appropriate peace officer to bring the defendant before the court or place the defendant in jail until the defendant can be brought before the court.” (It is worth noting that some local trial courts that properly issue *capias pro fines*, nevertheless, find themselves facing litigation because they fail to ever have the defendant brought before the court.)

Assuming that the defendant is in custody and before the court, the commitment provision of the Code of Criminal Procedure (Article 45.046) provides that:

(a) When a judgment and sentence have been entered against a defendant and the defendant defaults in the discharge of the judgment, the judge may order the defendant confined in jail until discharged by law if the judge determines that:

(1) the defendant intentionally failed to make a good faith effort to discharge the judgment; or

(2) the defendant is not indigent.

(b) A certified copy of the judgment, sentence, and order is sufficient to authorize such confinement.

In theory, Article 45.046 is the safeguard that prevents indigent individuals from wrongfully being incarcerated. In reality, however, its application once again depends on the judge understanding the entire *Tate* opinion. Note, that the article does not require the judge to find that the defendant failed to make a good faith effort and that the defendant is not indigent. Rather, on its face, it only appears to require that the court determine that the defendant either failed to make a good faith effort or that the defendant is not indigent. Judges who are unfamiliar with *Tate* or who choose to ignore its holding could feasibly commit a defendant to jail without having ever considered whether the defendant was indigent.

Such a textual construction, while valid on its face, is wrought with legal hazard. *Tate* fundamentally stands for the proposition that indigent people cannot be incarcerated without being given an alternative means of paying the fine and costs. Unfortunately, the Legislature’s initial response to *Tate* inadvertently leaves open an avenue for construing the law in a manner that circumnavigates the Supreme Court’s decision. This potential construction problem is compounded by the fact that Texas law contains no institutional mechanism for determining whether a defendant is indigent.<sup>18</sup> Not to say that a defendant could not be first arrested, however, in accordance with *Tate*, an indigent determination must be made prior to “commitment.”<sup>19</sup> While some states require a court to conduct a hearing to determine whether a defendant is indigent before it imposes a fine, Texas does not. In fact, Texas law is entirely silent as to what responsibility, if any, a local trial court judge has to inquire into the subject. Presumably, the burden is on the defendant to bring the issue to the court’s attention. However, in light of the number of *pro se* defendants who are adjudicated through such courts, it is unknown how many defendants know to raise the issue. Because defendants have limited time to appeal and because most appeals result in a *trial de novo*, critics of similar laws in Alabama claim, “the result is limited appellate oversight of the practice, and hence few chances to catch errors or develop common law practice regulating adjudication of indigency.”<sup>20</sup> The same is likely true in Texas where the Court of Criminal Appeals has yet to have the opportunity to consider such issues.

Misinterpretation of *Tate* and confusion regarding the Legislature’s response cuts both ways. While some judges may be ignoring *Tate*’s mandate protecting the rights of indigent defendants, others apparently construe

*Tate* and Article 45.046 as barring indigent defendants from being committed to jail. The Supreme Court clearly stated that its holding in *Tate* should not be misconstrued “as precluding imprisonment as an enforcement method when alternative means are unsuccessful.”<sup>21</sup> (Furthermore, the Court emphasized that its holding “did not suggest any constitutional infirmity in imprisonment of a defendant with the means to pay a fine who refuses or neglects to do so.”) Alas, the likely culprit of confusion is once more Article 45.046. Properly construed, Article 45.046 authorizes indigent defendants who have been given an alternative means of discharging their fines and costs (through installment payments or community service) to nonetheless be committed to jail upon default.<sup>22</sup>

## Conclusion

The irony of the *Tate* decision is that it was brought about in response to the perceived mistreatment of the indigent. Yet today, more than 30 years after the *Tate* decision, municipal and justice courts are still without a definition or standards for determining who is indigent. While from an equal protection perspective Texas law is better than it was prior to *Tate*, it is hard to say that it is as good as it should be. In light of *Tate*, anecdotal evidence of “pay or lay” and recent headlines describing class action lawsuit against local governments are perhaps symptomatic of deficiencies in Texas statutory law. Until the Legislature or the Court of Criminal Appeals address these issues, judges, prosecutors, law enforcement, and other local officials are best advised to be on guard. 🚧

<sup>1</sup> 28 U.S.C. 2007. (“A person shall not be imprisoned for debt [through] process issued from a court of the United States in any State wherein imprisonment from debt has been abolished.”)

<sup>2</sup> Derek Westen, Comment, *Fines, Imprisonment, and the Poor: "Thirty Dollars or Thirty Days,"* 57 *Calif. L. Rev.* 778, 780-87 (1969).

<sup>3</sup> *Williams v. Illinois*, 399 U.S. 235, 247-258 (1970).

<sup>4</sup> Dennis M. Ryan, *Criminal Fines: A Sentencing Alternative to Short-Term Incarceration*, 68 *Iowa L. Rev.* 1285, 1304 (1983).

<sup>5</sup> *Annual Report of the Texas Judicial System, Fiscal Year 2001*, Office of Court Administration, Austin, Texas.

<sup>6</sup> Article 793, Code of Criminal Procedure. [Repealed.]

<sup>7</sup> *Ex parte Ferguson*, 132 S.W.2d 408 (Tex.Crim.App. 1939).

<sup>8</sup> *Ex parte Tate*, 445 S.W.2d 210 (Tex.Crim.App. 1969).

<sup>9</sup> *Tate v. Short*, 401 U.S. 395 (1971).

<sup>10</sup> *Ex parte Tate*, 471 S.W.2d 404 (Tex.Crim.App. 1971).

<sup>11</sup> *TMCEC Indigency and Enforcement Survey* (FY 2003) (In Progress). Data reflects survey of 514 judges conducted between October 16, 2002 and March 4, 2003.

<sup>12</sup> *TMCEC Indigency and Enforcement Survey* (FY 2003) (In Progress). Data reflects survey of 469 judges conducted between October 16, 2002 and March 4, 2003.

<sup>13</sup> See, e.g., Miram Rozen, "Plaintiff Alleges City Failed to Give Detainees Indigency Hearings" *Texas Lawyer* (March 3, 2003); "El Paso Sued Over Jailing Indigents" *Texas Municipal Court Justice Court News*, Vol. XV, No. 11 (June 2002); Jennifer Shubinski, "Law Suit Targets Jailing of Indigents for Fines" *El Paso Times* (March 30, 2002).

<sup>14</sup> See, e.g., Note, "Imprisonment for Nonpayment of Fines – Treating Unequals Equally Constitutes a Denial of Equal Protection," 45 *Tul. L. Rev.* 627 (1971); Note, "The Equal Protection Clause and Imprisonment of the Indigent for Nonpayment of Fines," 64 *Mich. L. Rev.* 938 (1966); Note, "Fines and Fining – An Evaluation," 101 *U. Pa L. Rev.* 1013 (1953).

<sup>15</sup> "Alabama Raises the Rates at which Individuals in Jail for Nonpayment of Fines Earn Out Their Debts," 116 *Ham. L. Rev.* 735, 739 (2002).

<sup>16</sup> *Ex parte Tate*, 471 2d 404, 406 (Tex.Crim.App. 1971).

<sup>17</sup> 471 S.W.2d 54, 55 (Tex.Crim.App. 1971).

<sup>18</sup> In fact, the only statute defining "indigent" relates to the right to

representation by counsel. Article 1.051, Code of Criminal Procedure.

<sup>19</sup> Though there is little authority to distinguish the terms, it is important to delineate "commitment" to jail from "sentencing" a defendant to jail. As local trial courts in Texas adjudicate fine-only offenses, they do not have the authority to "sentence" defendants to jail. Rather, as an enforcement mechanism, upon default of the judgment of the court defendants may face "commitment." Such a distinction is not always evident, see, e.g., *Tex. Atty Gen. Op. No. JC-0393* (2001) (citing *Banks v. State*, 708 S.W.2d 460 (Tex.Crim.App. 1986) which dealt with cumulating sentencing orders.

<sup>20</sup> *Supra*, note 15 at 741.

<sup>21</sup> *Tate v. Short* at 400-401.

<sup>22</sup> This interpretation obviously prevents the law from engaging in reverse discrimination against the non-indigent.

### Legal Q&A continued from page 1

Further, Chapter 30 of the Government Code authorizes a city to create a municipal court of record by ordinance. Section 30.00003, Government Code. In addition, Chapter 30 contains specific statutes that establish municipal courts of record in particular cities.

The main difference between the two types of municipal court surfaces on appeal. Appeals from either type of municipal court are generally to the county court. Art. 4.08, Criminal Code of Procedure. Appeals from a municipal court are tried *de novo*, meaning that the case is tried again from the beginning, and all the evidence and witnesses must be presented again. On the other hand, an appeal from a municipal court of record is based on specific points of error as contained in the "record" of the court. *Id.* at Art. 44.17. Municipal courts of record are created for the practical purpose of providing a more efficient disposition of appeals.

**Q:** May a home-rule city that does not have a municipal court of

record remove a municipal judge during his or her term of office?

Yes, so long as the charter authorizes the removal. Chapter 29 of the Texas Government Code establishes a municipal court in each city and states that the judge of the municipal court in a home-rule city is selected according to the charter provisions of the city. Section 29.004, Government Code. The judge of a municipal court serves for a term of office of two years unless the city provides for a longer term pursuant to Article XI, Section 11, of the Texas Constitution. *Id.* at Section 29.005.

Chapter 30 of the Texas Government Code contains a removal provision for judges in municipal courts of record. See *Id.* at Section 30.00001 (applying the removal provisions of Section 30.000085 only to each municipal court of record listed in Chapter 30). However, Chapter 29, which applies to cities without a municipal court of record, has no similar removal position. But see *Id.* at Section 29.011 (Vacancy). Thus, court cases provide the guidance in this area.

*Barnett v. City of Plainview*, 848 S.W.2d 339, 340 (Tex. App.—Amarillo 1993, no writ) held that a home-rule city, based on charter authority and Chapter 29 of the Government Code, has the power to create the office of municipal judge, and that:

[i]ncidental to that power, and essential and necessary to make the objective and purposes of the provisions effective, is the implied power to remove the judge if his performance is unsatisfactory. To hold otherwise would be to force the City to maintain a municipal judge for two years regardless of his performance, and would not meet the objective of having a qualified, competent judge in office.

The *Barnett* case held that the language in the City of Plainview charter

allowed the city council to remove a municipal judge during his term of office for the reasons stated in the charter. The Plainview Charter states that the municipal judge will serve “for such length of time as the council shall decide.” See also *Ratliff v. City of Wichita Falls*, 115 S.W.2d 1153, 1154 (Tex. Civ. App.—Amarillo, 1938, writ dismissed)(the city had full authority under its charter language to remove its municipal judge). Similarly, many charters state that the “city council shall appoint a municipal judge who shall hold his respective office at the pleasure of the city council.” Thus, so long as the language in the charter authorizes the removal, the city council may remove a municipal judge at any time and for any reason.

Of course, as competent attorneys may have differing interpretations of the law, a city should consult with local counsel prior to taking action on this issue.

**Q:** May a general-law city that does not have a municipal court of record remove a municipal judge during his or her term of office?

Yes, under the authority of Chapter 22 of the Texas Local Government Code. Chapter 29 of the Government Code establishes a municipal court in each city and states that, in a general-law city, the mayor is *ex officio* judge of the municipal court unless the city by ordinance authorizes the election or appointment of a municipal judge. Section 29.004, Government Code. As in a home-rule city, the judge of a municipal court serves for a term of office of two years unless the city provides for a longer term pursuant to Article XI, Section 11, of the Texas Constitution. *Id.* at Section 29.005.

The *Barnett* case, mentioned above, held that a home-rule city, based on charter authority and Chapter 29 of the Government Code, has the power to remove a municipal judge during his term of office for the reasons stated in

the charter. Arguably, the *Barnett* decision is equally applicable to a general-law city because the Legislature has delegated the exact same powers to a general-law city through Chapter 22 of the Local Government Code. The Local Government Code states that the city council:

(a) may remove a municipal officer for incompetency, corruption, misconduct, or malfeasance in office after providing the officer with due notice and an opportunity to be heard, [or]

(b) may remove the officer at any time [for lack of confidence upon a two-thirds vote]. Section 22.077, Local Government Code.

The language in Chapter 22 is substantially similar to that of the city charter in the *Barnett* case. A municipal judge, whether elected or appointed, is an officer of the city. See *Id.* at Section 22.071(a). Section 22.077(a) of the Local Government Code provides that any municipal officer may be removed from office for incompetency, corruption, misconduct, or malfeasance in office after notice and hearing. More specifically, an appointed municipal officer may be removed for lack of confidence upon a two-thirds vote of the council. *Id.* at Section 22.077(b).

Harmonizing these two provisions under the *Barnett* analysis leads to the conclusion that an appointed municipal judge, as an officer of a general-law city, may be removed by the city council under Section 22.077(b) after a two-thirds vote for lack of confidence, while an elected judge may only be removed under Section 22.077(a) after notice and an opportunity to be heard.

Absent an attorney general’s opinion or court case to contrary, the Texas Municipal League’s position is to broadly interpret the authority of general cities and advise that the city

council may terminate a municipal judge under Chapter 22. Of course, a city wishing to remove a municipal judge from office during his or her term should consult with local counsel prior to making that decision.

**Q:** What is the procedure for the removal of a municipal judge in a general-law city with a municipal court of record?

Section 30.000085 of the Government Code states that, in a general-law city with a municipal court of record, the judge may be removed from office at any time for the reasons stated in Chapter 21, Subchapter B of the Texas Local Government Code. The reasons stated in Chapter 21, Subchapter B include incompetency, official misconduct, or intoxication. Section 21.025, Local Government Code. The procedural requirements of Subchapter B, which require the filing of a removal petition in district court and a jury trial if requested, must also be followed. See *Id.* at Section 21.026 et seq.

**Q:** What is the procedure for the removal of a municipal judge in a home-rule city with a municipal court of record?

A judge of a home-rule city may be removed from office by the governing body in accordance with charter provisions. If the charter does not provide for the removal of judges, a judge may be removed as provided by Article V, Section 1-a of the Texas Constitution (see next question), or by the procedure provided for in Chapter 21, Subchapter B of the Local Government Code. Section 30.00008, Local Government Code 5.

**Q:** What is the procedure for a complaint against a judge under Article V, Section 1-a of the Texas Constitution?

In addition to the above procedures, a person aggrieved by the actions of a municipal judge may also, under

Article V, Section 1-a of the Texas Constitution, file with the State Commission on Judicial Conduct a sworn complaint charging a municipal judge with willful or persistent violation of rules of the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful and persistent conduct that is clearly inconsistent with the proper performance of his or her duties or that casts public discredit on the judiciary or on the administration of justice. The Commission subsequently makes a recommendation to the Texas Supreme Court, who will finally adjudicate the matter. ⚖️

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## **Worried about Uncollected Court Fines and Fees?**

**Sign up for the:**

### **TMCEC 2nd Annual Fines & Fees Collections & Enforcement Conference**

**April 15-16, 2003**

#### **Omni Corpus Christi Bayfront Tower**

This elective program is planned to help judges, clerks, and city officials design effective means to increase collections. Funding is available for a limited number of municipal judges and court support personnel to attend at no charge. Housing and a travel stipend is available on a first-come, first-serve basis.



A descriptive flyer was sent to every municipal court in early March. If you need an additional copy, call TMCEC at 800/252-3718 or view the conference brochure online at [www.tmcec.com](http://www.tmcec.com)

# **Texas Municipal Courts of Record**

### **Under Chapter 30, Government Code**

Addison  
Amarillo  
Arlington  
Austin  
Bullard  
Burleson  
Carrollton  
Coppell  
Crowley  
Dallas  
Dalworthington Gardens  
Denton

El Paso  
Euless  
Farmers Branch  
Flower Mound  
Fort Worth  
Garland  
Grand Prairie  
Grapevine  
Hill Country Village  
Houston  
Hurst  
Irving  
Kennedale  
Lake Worth  
Lewisville  
Live Oak  
Longview

Lubbock  
Mansfield  
Marshall  
Midland  
Odessa  
Pantego  
Richardson  
Rio Bravo  
River Oaks  
Rowlett  
San Antonio  
Sansom Park  
Sweetwater  
Trophy Club  
Tyler  
Westlake  
White Settlement  
Wichita Falls

### **By Ordinance**

Azle  
Bulverde  
Bellaire  
Bonham  
Lakeway  
Orange  
Pearland  
Rio Grande City  
Southlake  
Wimberley

(Please let TMCEC know if your city becomes a court of record by ordinance.)

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# How a Court Becomes a Court of Record

Before you decide to become a court of record, make sure it is the best move for your court. It will be more expensive. Courts of record must have attorney judges with at least two years experience in the practice of law. Proceedings in courts of record must be recorded by a court reporter or a “good quality electronic recording device.” Becoming a court of record will impose additional duties on the clerk and prosecutor in the event of appeals. The chief advantage is that all appeals will be “on the record”, as opposed to “*de novo*.” This makes appeals more costly to appellants and to the municipality. Appellants are no longer entitled to a brand new trial but must file briefs and show error at an earlier trial to entitle them to dismissal or, more likely, a retrial in the municipal court. If the appellant fails to show error and the case is affirmed, the municipal court collects the fine and costs owed. The court of record has fewer appeals and does not lose income to the court hearing the trial *de novo*. The judge of a court of record also has the ability to sign evidentiary search warrants and could be granted additional jurisdiction in nuisance abatement cases.

If this is the course you wish to take, it has become much easier to become a court of record with the passage of the Uniform Municipal Court of Record Act, which became effective September 1, 1999. The act is laid out in Sections 30.00001 through

30.00027 of the Texas Government Code. Before the act, each municipal court of record was created by specific legislative enactment found later in Chapter 30 of the Government Code.

The process begins pursuant to Section 30.00003, Government Code, with the passage of an ordinance. The ordinance must declare the municipal court to be “of record” and create separate courts, or a unified court with divisions as necessary. A court of record cannot exist with a court not of record in the same municipality. The ordinance does not have to be reenacted because the court has no term. The governing body must specifically find that, “the creation of the court is necessary to provide a more efficient disposition of cases ... .”

The ordinance should then determine the jurisdiction of the court under Section 30.00005, Government Code. The jurisdiction over fine-only ordinances is automatically provided by statute. The governing body may grant concurrent jurisdiction with the justice courts over State law violations of fine-only offenses that occur in the territorial limits of the municipality. The governing body may also grant civil jurisdiction under Chapters 214 and 54 of the Local Government Code and Chapter 683, Subchapter E, Transportation Code. These sections deal with nuisance abatement and junked cars. The governing body can also grant nuisance enforcement warrants and seizure powers to the court.

The qualification of judges in courts of record is laid out in Section 30.00006, Government Code. A judge must be a resident of the state, a citizen of the United States, and a licensed attorney with two years legal experience. The ordinance must set the term of the judge at two or four years. If the ordinance creates more than one judicial position, one judge must be designated as the presiding judge. The code goes on to give the presiding judge many administrative responsibilities.

The ordinance must provide for the appointment of a clerk; it may provide for deputy clerks, warrant officers, or other support personnel. The Government Code specifically requires the court personnel to be under the supervision of the court. Finally, the ordinance must appoint a court reporter or require recording devices and designate a court reporter to transcribe appellate transcripts.

The rest of the Uniform Municipal Court of Record Act references other applicable law and details the appellate procedure outlined elsewhere in this periodical. As one can see, the creation of a court of record is fairly easy. It is also clear that if a municipality creates a court of record, they are obligated to staff and fund it. Many aspects of the court of record will increase revenue; so, too, many parts of a court of record will increase the cost of running a court. ➤

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**The next ten pages of this newsletter contain practical checklists, timetables, and handouts for use in your court. These were prepared by Margaret Robbins, TMCEC Program Director.**

## Similarities and Differences between Appeals from Convictions in Record and Non-Record Municipal Courts

Municipal Court of Record	Municipal Court of Non-Record
Defendant required to go to trial, or may appeal certain pretrial issues with permission of court.	Defendant can plead guilty or nolo contendere and appeal (no trial required).
Defendant <b>cannot</b> appeal if defendant does not complete a driving safety course or the terms of deferred disposition.	Defendant <b>can</b> appeal if defendant does not complete a driving safety course or the terms of deferred disposition.
Judgment must be rendered.	Judgment must be rendered.
Motion for new trial required.	Motion for new trial <b>not</b> required.
Notice of appeal required to be given not later than the 10 <sup>th</sup> day after the date on which the motion for new trial was overruled. (Court may extend time not to exceed 90 days.)	Notice of appeal <b>not</b> required.
Bond is double the amount of the fine and costs or \$100 whichever is greater.	Bond is at least twice the amount of the fine and costs but in no case is it less than \$50.
Bond may be cash, surety, or personal bond (if approved by judge); court may not require cash.	Bond may be cash, surety, or personal bond (if approved by judge); court may not require cash.
Appeal bond must be filed not later than the 10 <sup>th</sup> day after the motion for new trial overruled.	Appeal bond must be filed no later than 10 days after the judgment was entered. If the defendant appeared in open court, if the defendant delivered the plea to the court or mailed the plea, the defendant has up to 31 days after receiving notice from the court of the amount of the fine and appeal bond.
Mail Box Rule (Article 45.013, C.C.P.) does <b>not</b> apply to an appeal bond mailed to the court; however, Chapter 36 of the Government Code provides the judge with discretion to allow extensions of time in certain instances.	Mail Box Rule (Article 45.013, C.C.P.) does apply to an appeal bond mailed to the court.
Defendant has 60 days to file statement of facts, a written description of material to be included in the transcript in addition to the required material and any material to be included in the transcript that is not in the custody of the clerk.	No statement of facts or other material required in an appeal from a municipal court of non-record.
Judge must approve the sufficiency of the sureties on the bond and the record.	Judge must approve the sufficiency of the sureties on the bond.
Defendant must pay a \$25 transcription fee.	Defendant does <b>not</b> pay a transcription fee.
Defendant must pay the actual cost of transcript preparation.	Defendant does <b>not</b> pay any fee since there is no transcript.
After judge approves record, the clerk shall promptly send the record to the clerk of the appellate court.	Clerk makes copies of case file and sends originals to appellate court as soon as possible.
The prosecution may brief the appellate court that the defendant did not properly meet all the time deadlines for the appeal. (The appellate court then remands the case to the municipal court for enforcement of its judgment.)	If defendant filed the appeal bond after the required time deadlines, the appellate court shall remand the case to the municipal court to collect its judgment.
Defendant may make a motion to withdraw the appeal.	Defendant may <b>not</b> make a motion to withdraw appeal.
If judgment affirmed, the appellate court must notify the municipal court. The municipal court may forfeit bond, issue <i>capias pro fine</i> , issue executions against the defendant's property, or order a refund for the defendant's costs, or conduct an indigency hearing at the court's discretion.	If defendant convicted in the trial de novo, appellate court collects the fine and costs and keeps the fine.
If appellate court grants new trial, the case is sent to the municipal court to be retried.	The appellate court conducts a trial de novo. Municipal court <b>does not ever</b> conduct a new trial.



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## Checklist for Appeals from Municipal Courts of Record

- All defendants have a right to appeal their convictions. (Article 44.02, C.C.P.)
- Defendant required to go to trial.
- Judgment is entered (conviction). (Article 45.014, C.C.P.)
- Defendant makes a written motion for a new trial not later than 10<sup>th</sup> day after date on which judgment is rendered. (Sec. 30.00014(c), G.C.)
  - The motion may be amended with permission of the court not later than the 20<sup>th</sup> day after the date on which the original motion is filed.
  - The court may extend the time for filing or amending not to exceed 90 days from the original filing deadline.
  - If the court does not act on the motion before the expiration of the 30 days allowed for determination of the motion, the original or amended motion is overruled by operation of law.
- If the motion for new trial is denied, if the defendant wants to appeal, the defendant must give notice of the appeal not later than the 10<sup>th</sup> day after the date on which the motion for new trial was overruled. (Section 30.00014(d), G.C.)
  - The notice of appeal may be given orally in open court, if the defendant requested a hearing on the motion for new trial.
  - If there is no hearing on the motion for new trial, the notice of appeal must be in writing and must be filed with the court not later than the 10<sup>th</sup> day after the motion for new trial is overruled. The court may extend the time period not to exceed 90 days from the original filing deadline.
- The appeal bond must be approved by the court and must be filed not later than the 10<sup>th</sup> day after the date on which the motion for new trial is overruled. (Section 30.00015(a), G.C.)
- The appeal bond must be in the amount of \$100 or double the amount of the fines and costs adjudged against the defendant, whichever is greater. (Section 30.00015(b), G.C.)
  - Conditions of appeal bond – Must state that the defendant was convicted in the case and has appealed; and be conditioned on the defendant’s immediate and daily personal appearance in the court to which the appeal is taken. (Section 30.00015(c), G.C.)
  - Judge determines whether the surety(ies) is sufficient.
- Defendant must pay a \$25 transcript preparation fee required to be established by ordinance. This fee will be refunded to the defendant if the case is reversed and dismissed on appeal. (Section 30.00014(f), G.C.)
- Defendant must pay the cost for an actual transcript of the proceedings. (Section 30.00014(g), G.C.)
- Defendant must pay for a statement of facts.
- Record on appeal – must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. (Section 30.00016, G.C.)
  - The transcript must conform to the provision in the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. (Section 30.00017, G.C.)
  - The bills of exception must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. (Section 30.00018, G.C.) (A bill of exception is a formal statement in writing of the objections or exceptions taken by a party during the trial of a cause to the decisions, rulings, or instruction of the trial judge, stating the objection, with the facts and circumstances on which it is founded, and in order to attest its accuracy, signed by the judge.)

- 
- The statement of facts must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. The defendant must pay for the statement of facts. (Section 30.00019, G.C.)
  - Transfer of the record – Not later than the 60<sup>th</sup> day after the date on which the notice of appeal is given or filed, the parties must file the statement of facts, a written description of material to be included in the transcript, and any material to be included in the transcript that is not in the custody of the clerk. (Section 30.00020(a), G.C.)
    - On completion of the record, the municipal judge shall approve the record in the manner provided for record completion, approval, and notification in the court of appeals. (Section 30.00020(b), G.C.)
    - After the judge approves the record, the clerk shall promptly send the record to the appellate court clerk for filing. (Section 30.00020(c), G.C.)
    - The appellate court determines appeal from the municipal court of record conviction on the basis of the errors that are set forth in the appellant’s motion for new trial and that are presented in the transcript and statement of facts. (Section 30.00014(b), G.C.)
  - Withdrawal of appeal.
    - Defendant may submit a written motion to withdraw appeal.
  - If bond is defective in form or substance, the appellate court shall allow the defendant to file a new bond. (Article 44.15, C.C.P.)
  - Disposition on appeal – Appellate court may:
    - Affirm the judgment of the municipal court of record;
    - Reverse and remand for a new trial;
    - Reverse and dismiss the case; or
    - Reform and correct the judgment.
    - If appellate court reverses and dismisses the case, the court must refund the \$25 transcription preparation fee to the defendant.
    - If appellate court grants a new trial, it is as if the municipal court of record granted the new trial. The new trial is conducted by the municipal court of record. (Section 30.00026, G.C.)
    - If the judgment is affirmed, the fine imposed on appeal and the costs imposed on appeal shall be collected from the defendant, and the fine of the municipal court when collected shall be paid into the municipal treasury. (Article 44.281, C.C.P.)
    - The municipal court collects the fine. (Section 30.00025(b)(1-5))
    - The court may enforce the judgment by:
      - forfeiting the defendant’s bond;
      - issuing a *capias pro fine* for the defendant; or
      - issuing a writ of execution against the defendant’s property.
    - The municipal court may order a refund of the defendant’s costs.
    - The municipal court may conduct an indigent hearing.

In a municipal court of non-record, the time deadlines are enlarged by the Mail Box Rule. This Rule adds an additional 10 working days after the time deadline if defendant mails bond within the time deadline and the court receives the bond within 10 working days. The Mail Box Rule does not apply to appeal time deadlines in municipal courts of record.

## Appellate Timetable for a Record Municipal Court

The appeal process has several deadlines that defendants and courts must adhere to in order to properly process appeals. The Code Construction Act, codified in Chapter 311 of the Government Code, establishes rules by which courts count days. Section 311.014, G.C. provides that when counting days, the court excludes the first day, but includes the last day. If the last day falls on a weekend or legal holiday, the court must extend the time to the first working day of the court.

Days	Required Actions
	Final verdict; judge read of guilty verdict
Day 1 (day after judgment entered)	Defendant required to file a motion for a new trial. Defendant must file motion by 10 <sup>th</sup> day after judgment.
Day 1 through Day 10	Defendant's motion for new trial filed with court.
20 days from date motion for new trial filed with court. (Court may extend time for filing or amending motion for a period not to exceed 30 days from the original deadline, which would be on the 31 <sup>st</sup> day after the 10 <sup>th</sup> day for filing the motion for new trial.)	Defendant may amend motion for new trial within 20 days from date original motion for new trial is filed.
Within 30 days from date of motion or amended motion for new trial was filed.	Court acts on motion for new trial. If court does not act on motion by 30 <sup>th</sup> day, motion overruled by operation of law.
10 days from date motion for new trial overruled. (Court may extend time for filing or amending for a period not to exceed 30 days from the original deadline, which would be counted from the 31 <sup>st</sup> day after the motion for new trial was overruled by the judge or by operation of law.)	Defendant files written notice of appeal. If defendant had a hearing on the motion for new trial, defendant may present an oral notice of appeal.
10 days from date motion for new trial overruled.	Defendant must file appeal bond with the court. (Court approves bond.)
Within 60 days from date notice of appeal filed with the court. Notice of appeal required to be filed by the 10 <sup>th</sup> day from the date the motion for new trial was overruled.	Defendant must submit to court the statement of facts, written description of material to be included in transcript in addition to the required material; and any material to be included in the transcript that is not in the custody of the clerk.
Promptly sent to appellate court and notice to appellant (defendant) and prosecuting attorney.	After judge approves the record, the clerk must promptly send record to appellate court. Court notifies defendant and prosecuting attorney that record sent.
By 15 <sup>th</sup> day after transcript and statement of facts filed with the appellant court clerk.	Appellant's (defendant) brief must be on file with the appellate court.
By the 15 <sup>th</sup> day after appellant files brief with the appellate court clerk.	Prosecutor files brief with the appellate court.

### APPEAL FROM A MUNICIPAL COURT OF RECORD

#### Rights and Procedures for Defendants

The purpose of this pamphlet is to provide you with information about appealing a conviction from the municipal court to an appellate court. If you have questions about your legal rights or whether you should appeal, please consult with a licensed attorney of your choice.

#### Right to Appeal

- You have the right to appeal a conviction in municipal court. This right applies if you are convicted at trial. You must request that the court record the trial.
- The State (represented by the city attorney or deputy city attorney) has the right to appeal:

#### Appeal Procedures

- Before you can appeal, the municipal court must enter a final judgment of guilty against you and impose a penalty (fine and costs).
- Before you can appeal, you must file a written motion for new trial with the municipal clerk not later than the 10<sup>th</sup> day after the date on which judgment is rendered.
  - The motion must set forth the points of error of which you complain.
  - If the municipal court consents, you may amend the motion or amend an amended motion at any time before the court takes action on the motion, but not later than the 20<sup>th</sup> day after the date on which the original or amended motion is filed.
  - The court may for good cause extend the time for filing or amending, but the extension may not exceed 90 days from the original filing deadline.
  - You may, but are not required to, request a hearing on the motion for new trial.
- If the court grants the motion for new trial, you will again proceed to trial in the municipal court. Only one motion for new trial will be granted.
- If the court denies the motion for new trial, you may appeal.
- If the court does not act on the motion for new trial before the expiration of the 30 days allowed for determination of the motion, the original or amended motion is overruled by operation of law. This means that your motion for a new trial is automatically overruled.
- You must give the court notice of appeal.
  - If you requested a hearing on the motion for new trial, you may give notice of appeal orally in open court if the court overrules your motion for new trial.
  - If there was no hearing, you must give written notice of appeal that must be filed with the court no later than 10<sup>th</sup> day after the motion for new trial was overruled.
  - The court may extend the time for good cause for a period of time not to exceed 90 days from the original filing deadline.
- You must file an appeal bond with the court.
- The court must set the appeal bond at double the fine and costs assessed against you or at \$100 whichever amount is greater. The court must approve the appeal bond.
- Type of appeal bond:
  - The court may not require a cash bond, but you may choose to file that type of bond.
  - You may file a surety bond. The court has a duty to determine the sufficiency of your surety or sureties.
  - If you have an attorney, the attorney may act as surety on your bond. The attorney must meet the requirements of a surety. The court has a duty to determine the sufficiency of the bond filed by your attorney.
  - If you are indigent, you may request the court to conduct an indigent hearing to determine your ability to make bond. The

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court has the authority to grant a personal appeal bond if you are indigent.

- You must file the appeal bond with the court no later than the 10<sup>th</sup> day after the date on which the motion for new trial was overruled.
- You are required to pay to the court a \$25 transcript preparation fee. This fee will be refunded if your case is reversed on appeal.
- You are required to pay the cost for an actual transcript of the proceedings. This fee varies depending on the length of your trial in municipal court.
- You must pay for a statement of facts (the facts of the case presented at trial).
- Not later than the 60<sup>th</sup> day after the date on which the notice of appeal was given or filed, you must file with the municipal clerk:
  - the statement of facts;
  - a written description of material to be included in the transcript in addition to the required material; and
  - any material to be included in the transcript that is not in the custody of the clerk.
- You will receive notice from the appellate court (usually the county court, or a municipal court of appeals) that the record has been filed with the court.
- You must file a brief with the appellate court that presents points of error in the manner required by law for a brief on appeal to the court of appeals.
  - You must file the brief with the appellate court clerk not later than the 15<sup>th</sup> day after the date on which the transcript and statement of facts are filed with the appellate clerk.
  - You or your attorney must certify that the brief has been properly mailed to the city attorney of the city in which your case was tried. (The city attorney must file a brief with the appellate court clerk not later than the 15<sup>th</sup> day after date on which you filed your brief.)
- You are required to deliver a copy of your brief to the city attorney and to the municipal judge. Likewise, the city attorney must deliver a copy of his or her brief to you and the municipal judge.
- After the municipal judge receives both briefs, he or she must decide whether you may be permitted to withdraw your notice of appeal and be granted a new trial by the municipal court. If the court does not grant the new trial, you must proceed in the appellate court.
- The appellate court may require you to submit oral argument in behalf of your case.
- The appellate court may:
  - Affirm the judgment of the municipal court of record;
  - Reverse a remand for a new trial;
  - Reverse and dismiss the case; or
  - Reform and correct the judgment.
- You will receive by mail a copy of the decision as soon as the decision is rendered.
- If the appellate court dismisses the case, you will be released without any liability. The \$25 transcript preparation fee will be refunded. Contact the court about the fee.
- If the municipal court judgment is affirmed, the municipal court of record may:
  - Forfeit your appeal bond;
  - Issue a writ of *habeas corpus* (warrant) for you;
  - Issue an execution against your property;
  - Order a refund for your appeal costs; or
  - Conduct an indigent hearing to determine your ability to pay the fine and costs.
- If the appellate court awards you a new trial, the case stands as if the municipal court granted you a new trial and the municipal court will conduct another trial.
- If the fine assessed against you is more than \$100 and the judgment is affirmed by the appellate court, you have the right to appeal your case to a Texas Court of Appeals in the judicial district in which your county is located.

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## Checklist for Appeals Non-Record Municipal Courts

- All defendants have a right to appeal their convictions. (Article 44.02, C.C.P.)
- Defendant not required to go to trial.
- Judgment entered (conviction). (Article 45.041, C.C.P.)
  - Defendant can plead guilty or nolo contendere and appeal.
  - If defendant does not complete a driving safety course or the terms of deferred disposition, defendant may appeal.
- Defendant may give notice of appeal (but is not required to do so). (Article 45.0426(c), C.C.P.)
- Appearance in open court – no later than 10 days from date of judgment to file appeal bond. (Articles 44.16 and 45.0426(a), C.C.P.)
  - Mail Box Rule – If defendant mails the bond on or before the due date and the court receives it within 10 working days from the due date, the bond is properly filed. (Keep envelope) (Article 45.013, C.C.P.)
  - If appeal bond is not timely, the municipal court must still send it to the appellate court.
- Appearance by mail – court must either personally deliver notice of the amount of fine and appeal bond or notify the defendant by certified mail, return receipt requested. Defendant has up to 31 days from the date of receiving the notice to file an appeal bond. (Article 27.14(b), C.C.P.)
  - Mail Box Rule – If defendant mails the bond on or before the due date and the court receives it within 10 working days from the due date, the bond is properly filed. (Keep envelope) (Article 45.013, C.C.P.)
  - If appeal bond is not timely, the municipal court must still send it to the appellate court.
- Appeal appearance bond must be at least two times the amount of the fine and court costs, but in no case less than \$50. (Article 45.0425(a), C.C.P.)
- Bond may be cash or surety (court cannot require cash); judge may grant a personal appeal bond. (Articles 17.38, 44.20, C.C.P.)
  - Conditions of the appeal bond – Must recite that the defendant has been convicted and has appealed and that the defendant will make a personal appearance before the court to which the appeal is taken instanter, if the court is in session, or, if the court is not in session, at its next regular term, stating the time and place of that session, and there remain from day to day and term to term, and answer in the appealed case before the appellate court. (Article 45.0425(b), C.C.P.)
- If bond filed after time deadline, the appellate court shall remand (send back) the case to the municipal court to collect judgment.
- If bond is defective in form or substance, the appellate court shall allow the defendant to file a new bond. (Article 44.15, C.C.P.)
- When court receives bond, clerk should date stamp day received.
  - Bond perfects (completes) appeal. (Article 45.0426(a), C.C.P.)
- Give bond to judge to make a determination if the surety(ies) is sufficient. (Article 44.04(e), C.C.P.)
- Clerk makes copies of all original papers in case file.
- Clerk transcribes (sends) case with all original papers and bond with a certified transcript to the appellate court (usually county court). (Article 44.18, C.C.P.)

- Case is tried de novo (a new trial) in county court. (Articles 44.17 and 45.042(b), C.C.P.)
- If defendant convicted in appellate court, appellate court collects fine and deposits it in the county treasury.
- Withdrawal of appeal.
  - Defendant may not withdraw appeal.

## **Appellate Timetable for a Non-Record Municipal Court**

The appeal process has several deadlines that defendants and courts must adhere to in order to properly process appeals. The Code Construction Act, codified in Chapter 311 of the Government Code establishes rules by which courts count days. Section 311.014, G.C. provides that when counting days, the court excludes the first day, but includes the last day. If the last day falls on a weekend or legal holiday, the court must extend the time to the first working day of the court. In a municipal court of non-record, the time deadlines are enlarged by the Mail Box Rule. This Rule adds an additional 10 working days after the time deadline if defendant mails the bond within the time deadline and the court receives the bond within 10 working days. The Mail Box Rule does not apply to appeal time deadlines in municipal courts of record.

### **Appearance in Open Court**

<b>Days</b>	<b>Required Actions</b>
	Defendant appears in open court. Judgment is entered.
Day 1 (day after judgment entered)	Start of 10 day time period for defendant to file appeal bond.
Day 1 through Day 10 (time may be enlarged by Mail Box Rule).	Defendant files appeal bond with clerk. Clerk gives bond to judge to determine sufficiency of surety(ies).
As soon as possible after judge determines sufficiency of sureties.	Clerk sends appeal bond and certified transcript with all originals in case file to appellate court.

### Appearance by Mail

Days	Required Actions
	Defendant mails plea of guilty or nolo contendere to court and requests the amount of the fine and the appeal bond.
	Clerk receives plea. Judge accepts plea and enters judgment setting amount of fine and the amount of the appeal bond.
	Clerk sends a certified letter return receipt requested notifying defendant of the amount of fine and appeal bond.
	Clerk receives green card with date that defendant received notice.
Day 1 (day after defendant received notice)	Clerk starts counting appeal bond deadline. Defendant must file bond before 31 <sup>st</sup> day after receiving notice.
Day 1 through Day 30 (time may be enlarged by Mail Box Rule).	Defendant files bond with court. Clerk receives bond by mail and gives bond to judge to determine sufficiency of surety(ies).
As soon as possible after judge determines sufficiency of surety(ies).	Clerk sends appeal bond and certified transcript with all originals in case file to appellate court.

### Appearance by Delivering Plea to Court

Days	Required Actions
	Defendant delivers plea of guilty or nolo contendere to court and requests the amount of the fine and appeal bond.
	Clerk receives plea. Judge accepts plea and enters judgment setting amount of fine and the amount of the appeal bond.
Day 1 (day after defendant received notice from the clerk).	Clerk provides defendant notice of the amount of the fine and appeal bond while defendant is at the court. Clerk starts counting appeal bond deadline. Defendant must file bond before 31 <sup>st</sup> day after receiving notice.
Day 1 through Day 30 (Time may be enlarged by the Mail Box Rule).	Defendant files bond with court. Clerk receives bond by mail and gives bond to judge to determine sufficiency of surety(ies).
As soon as possible after judge determines sufficiency of surety(ies).	Clerk sends appeal bond and certified transcript with all originals in case file to appellate court.



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## Handout for Defendants

### APPEAL FROM NON-RECORD MUNICIPAL COURT

#### Rights and Procedures for Defendants

The purpose of this pamphlet is to provide you with information about appealing a conviction from the municipal court to the appellate court. If you have questions about your right to appeal or whether you should appeal, please consult with a licensed attorney of your choice.

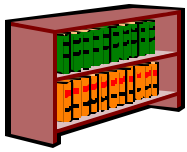
#### Right to Appeal

You have the right to appeal a conviction in municipal court. This right applies if:

- You are convicted at trial;
- Plead guilty or nolo contendere (no contest);
- Fail to complete a driving safety course; or
- Fail to comply with the terms of deferred disposition (probation).

#### Appeal Procedure

- Before you can appeal, the municipal court must enter a final judgment of guilty against you and impose a penalty (fine and costs).
- If you pay the fine and court costs, you may not appeal because the judgment of the court has been satisfied and there is nothing to appeal.
- You may give notice of appeal, but you are not required to do so. You must, however, notify the court of your intention to appeal and request the amount of the appeal bond.
- The court must set the appeal bond at least two times the fine and costs assessed against you and may set the bond higher. In any case, the bond may not be less than \$50.
- Type of appeal bond:
  - The court may not require a cash bond, but you may choose to file that type of bond.
  - You may file a surety bond. The court has a duty to determine the sufficiency of your surety or sureties.
  - If you have an attorney, the attorney may act as surety on your bond. The attorney must meet the requirements of a surety. The court has a duty to determine the sufficiency of the bond filed by your attorney.
- If you are indigent, you may request the court to conduct an indigent hearing to determine your ability to make bond. The court has the authority to grant a personal appeal bond if you are indigent.
- All bonds require certain paperwork to be filed with the court. If the court has bond forms available, they may provide them to you, but they may not help you complete the forms. Only an attorney hired by you may advise you.
- If you appeared in open court at trial or plead guilty or nolo contendere, you must file the appeal bond with the court by the 10<sup>th</sup> day after judgment.
- If you entered your appearance and plea of guilty or nolo contendere by mail and requested the amount of fine and appeal bond, the court must notify you of the fine and appeal bond amount by certified mail with return receipt requested. You must file your bond with the court before the 31<sup>st</sup> day after receiving the notice.
- Timely and properly filing your appeal bond completes the appeal process in municipal court.
- The municipal court will send your case and appeal bond to the appellate court (usually the county court). You must stay in contact with the county court so that you can timely appear in that court. If you fail to appear in the county court, the county court may declare a bond forfeiture and issue a *capias* (warrant) for your arrest.
- After your appeal has been completed in the municipal court, you may not withdraw your appeal. You must proceed in the county court.
- You will receive a new trial in the county court.
- If you are convicted in the county court and your fine is at least \$20 or more, you may appeal to a Texas Court of Appeals, which is the next level of appellate court in Texas.
- If you are found not guilty in the county court, you are released from liability without any costs.



# RESOURCES FOR YOUR COURT

## Celebrate Your Freedom

Law Day – May 1, 2003

It is time to start planning for Law Day. Law Day observances can extend over several days, weeks, or even year-round. Many courts and local bar associations focus on May 1st, although many events will begin nationally this year on or around April 28<sup>th</sup> and extend throughout the week. The American Bar Association has a wealth of Law Day information: [www.lawday.org](http://www.lawday.org). A free Law Day Planning Guide and Resource Catalog is also available (see form to right) which offers a wide variety of Law Day activities that are appropriate for courts.

This year's theme is *Independent Courts Protect Our Liberties*. Law Day can help people understand that "independent" courts are fair, impartial, and dedicated to the rule of law. Through Law Day, we can stress the importance of courts and judges free from political interference.

## The National Judicial College (NJC)

NJC offers many courses each year that are of interest to municipal judges. Typically longer in length than TMCEC courses, the NJC programs are often weeklong and offer participants a more in-depth look at the topic presented. Shown on pages 26-27 are descriptions of two of the upcoming traffic safety courses. For additional information and a listing of all of the course offerings, contact NJC staff at 800/25-JUDGE or access the information on the NJC web site: [www.judges.org](http://www.judges.org).

### Traffic Issues in the 21st Century

When: May 5-9, 2003  
Where: Reno, Nevada  
Cost: \$795 (early registration)\*  
\$895 (Late registration)

### Time to Get Started!

Fill out this form to receive a FREE Law Day Planning Guide and Resource Catalog.

Want to know more? Just give us a call or check out our website for updates: [www.lawday.org](http://www.lawday.org)

Name \_\_\_\_\_

Organization \_\_\_\_\_

Address: street number or P.O. Box \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip (must be for address listed above) \_\_\_\_\_

Phone \_\_\_\_\_

Fax \_\_\_\_\_

Get Law Day updates year round through e-mail. You have three easy ways to sign up:

1. Enter your e-mail address here.  
\_\_\_\_\_
2. Log on to [www.lawday.org](http://www.lawday.org) and register online.
3. Send an e-mail to [listserv@abanet.org](mailto:listserv@abanet.org) with a line "Subscribe lawday-list followed by your first and last name" in the body of message—for example, "Subscribe lawday-list John Doe."

Save time by faxing this form back to **312/988-5494**

I have questions?

Give us a call at **312/988-5735** or e-mail us at [abapubed@abanet.org](mailto:abapubed@abanet.org)



**American Bar Association**  
541 North Fairbanks Court  
Chicago, IL 60611-3314

\*Early registration is considered registration 60 days prior to the course start date.

This course provides an overview of legal and evidentiary issues related to plea taking, searches, seizures, arrests, and confessions. The course also provides information on the role of the traffic court judge in the community; ethical judicial outreach and bridge building; new approaches to aggressive driving offenses; techniques in dealing with the aging driving population; racial profiling issues; pretextual traffic stops; and new challenges in commercial motor vehicle cases. Participants will analyze and discuss current and emerging issues in blood alcohol pharmacology and sobriety testing; scientific evidence in

motor vehicle cases; effective sentences, sanctions, and dispositions; and addictive behavior. Pedestrian, motorcycle, and bicyclist safety issues are examined, and discussion groups combined with an interactive mock trial to provide proactive study. In addition, participants are encouraged to develop ideas for implementing successful partnerships with national, state, and community-based traffic safety entities.

## Sentence Motor Vehicle Law Offenders

When: August 25-28, 2003  
 Where: Reno, Nevada  
 Cost \$675 (early registration)  
 \$775 (late registration)

This course focuses on the objectives

and philosophies of sentencing, such as basic due process law and rehabilitation, restitution, retribution, and deterrence. The history of probation is evaluated, as are innovative probation conditions such as mandated evaluation, treatment, community service, and the use of bumper stickers and zebra license tags. Participants analyze the right to counsel, double jeopardy, the use of prior convictions for enhancement, and judicial liability and immunity. The course also provides information on the appropriateness of sentencing options for older drivers, young drivers, and addicted drivers. Communication styles, personality types, and methods of dealing with the media in high-profile cases are explored and evaluated.



## Texas Municipal Courts Education Center Legislative Update Registration Form

If a hotel reservation is required, please use the Registration Form on page 31.

August 4, 2003  
**Houston**  
 Sofitel Houston  
 425 North Sam Houston Parkway E.  
 Houston, TX 77060  
 Telephone Number: 281/445-9000  
 Register By: July 11, 2003

August 8, 2003  
**Austin**  
 Omni Southpark  
 4140 Governor's Row  
 Austin, TX 78744  
 Telephone Number: 512/448-2323  
 Register By: July 11, 2003

✓ The program you would like to attend & return completed form with a \$50 registration fee to TMCEC.

Name (please print legibly): \_\_\_\_\_  
 Street: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Office Telephone #: \_\_\_\_\_ Court #: \_\_\_\_\_ FAX: \_\_\_\_\_  
 Primary City Served: \_\_\_\_\_ Other Cities Served: \_\_\_\_\_  
 E-mail address: \_\_\_\_\_

Check all that apply:  Attorney  Non-Attorney  Full Time  Part Time  
 Presiding Judge  Associate/Alternate Judge  Justice of the Peace  Mayor  
 Court Clerk  Deputy Clerk  Court Administrator  Bailiff/Warrant Officer  
 Prosecutor  Other \_\_\_\_\_

I certify that I am currently serving as a municipal judge, city prosecutor, or court support personnel in a State of Texas. I understand that I will be responsible for making my own hotel reservations. Payment is required for this program; payment of \$50 is due with registration form. The \$50 is refundable if the Center is notified of my decision in writing two weeks prior to the seminar.

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



## FROM THE CENTER

### Housing at the TMCEC Legislative Updates

The TMCEC Board of Directors recently voted to provide housing at these elective seminars at no charge to the first 200 registrants. This will be for the night prior to the Legislative Update program only. The reason for this change is that many judges and court support personnel report that city budgets are extremely "tight" this year due to a loss in revenue from sales and hotel occupancy taxes. It is our hope that this small amount of financial support will help your city through these difficult times while, more importantly, allowing you to continue to stay up-to-date on important legislative changes affecting your court.

The Legislative Updates will be held the following dates in Houston and Austin. The registration form on page 27 of this newsletter can be used to register. If a hotel reservation is required, use the registration form on page 31. Registration forms should be accompanied by a \$50 registration fee made payable to TMCEC.

#### Houston - August 4, 2003 (M)

Sofitel Houston  
425 North Sam Houston Parkway E.  
Houston, TX 77060  
Telephone Number: 281/445-9000  
Register by: July 11, 2003

#### Austin - August 8, 2003 (F)

Omni Southpark  
4140 Governor's Row  
Austin, TX 78744  
Telephone Number: 512/448-2222  
Register by: July 11, 2003

The Legislative Update seminars are not a substitute for the annual judicial education requirement. Judges must still satisfy the 12-hour annual judicial requirement. New, non-attorney judges must still satisfy the 32-hour judicial education requirement. Attendance at the Legislative Update seminar will not be considered full nor partial satisfaction of judicial requirements.

Questions? Contact, Beatrice Flores, the TMCEC Registration Coordinator, at 800/252-3718.

### Double-Up on Judicial Education



Judges interested in attending more than one TMCEC 12-hour judicial education

program may do so at their own expense. If a judge has already attended one TMCEC 12-hour judge program and wants to now attend a special topic program, typically the charge will be \$86 for each night in the hotel, \$45 for food, and \$15 for course materials (total of \$232). The judge and/or city represented will be billed

after the completion of the seminar as prices vary at different hotels. Many judges have called with this question as they are now interested in attending the special topic *Evidence* or *Juvenile* programs being held later this year, but have already attended a TMCEC program in this fiscal year (September 1, 2002 – August 31, 2003). There is still housing and meeting room space available in both of these programs. Please register using the registration form on page 31 of this newsletter.

#### EVIDENCE

#### Austin - May 21-22, 2003 (W-Th)

Omni Southpark Austin  
4140 Governor's Row  
Zip Code: 78744  
512/448-2222

Register by: April 25, 2003

Topics tentatively scheduled for address include:

- Federal and State Case Law Update*
- Demeanor Objections and Ethical Courtroom Management*
- Judicial Notice, Privileges, and Competence*
- Common Predicate, Authentication, Identification, and Content Issues*
- Relevance*
- Character Evidence and Impeachment*
- Hearsay*
- Hearsay Exceptions*
- Mock Pretrial Hearing: Novel and Scientific Evidence*

This program addresses the application of the Texas Rules of Evidence to issues encountered in municipal court. The program will include breakout sessions with both

basic and advanced tracks. Judges wishing to increase their knowledge of the Rules of Evidence when ruling on trial issues are encouraged to attend.

## **JUVENILE LAW ISSUES IN MUNICIPAL COURT**

### **Corpus Christi**

**June 17-18, 2003 (T-W)**

Omni Corpus Christi Bayfront Tower  
900 N. Shoreline Blvd.

Zip Code: 78401  
361/887-1600

Register by: May 23, 2003

Topics tentatively scheduled for address include:

*Overview of Processing Juveniles in Municipal Court*

*Juvenile Confessions and Related Magistrate Issues*

*School Attendance*

*Juvenile & Gang Crime Issues in Municipal Court*

*Juvenile-Related Ethical Issues*

*Theories of Juvenile Delinquency*

*Panel Discussion: Juvenile Programs and Perspectives*

*Case Law and Attorney General Opinion Update*

*Juveniles Now Adults: Unanswered Questions in Trial Courts of Limited Jurisdiction*

This program is designed for judges who handle either substantial juvenile dockets or have a substantial interest in the subject of juvenile law.

TMCEC offers these special topic programs to give municipal judges an opportunity for more in-depth study on these topics. TMCEC program evaluations indicate that, while many of the municipal judges believe that 12 hours is a sufficient mandatory judicial education requirement, there are others who would like more educational opportunities and more thorough courses.

These will be submitted to the State Bar of Texas for continuing legal education credit. There is no additional registration fee. The Juvenile Law Issues program and the Evidence program both are approved to fulfill the 12-hours of mandatory judicial education requirement for municipal judges.

## **FINES & FEES COLLECTIONS AND ENFORCEMENT CONFERENCE**

TMCEC has added a new elective program to its academic schedule. On April 14-16, 2003 in Corpus Christi, TMCEC will host a special conference on *Fines & Fees Collections &*

*Enforcement* for municipal judges, court support personnel, and city officials.

The program is designed to help courts increase collections and promote respect for the courts and adherence to the law. There is a \$50 registration fee for city officials, but municipal judges and court support personnel may attend at no charge. TMCEC is offering travel stipends, housing, course materials and several meals at no charge to the first 125 municipal judges and court support personnel who register.

A descriptive brochure was mailed to the courts in early March. If you did not receive a copy, please contact Lidia Ball at TMCEC (800/252-3718). The brochure may also be accessed on the TMCEC web site: [www.tmcec.com](http://www.tmcec.com). Registration will be on a first-come, first-serve basis, and housing requests are due by March 31, 2003.

## **COMPUTER SKILLS 101**

TMCEC will once again offer a basic computer course to judges and clerks with computer skill levels ranging from no skills to a small amount of computer-related knowledge. Very basic instruction will familiarize the learner with the computer, its components and terminology, and will provide hands-on training in word processing and spreadsheet software and Internet and e-mail usage.

A brochure and registration form was mailed to each court in March. The registration form is also available on page 32 in this newsletter; online at [www.tmcec.com](http://www.tmcec.com); or call TMCEC at 800/252-3718 to request a faxed copy.

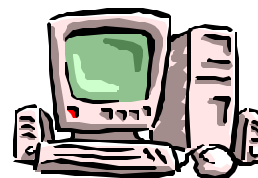
A limited number of hotel rooms for a one-night stay at grant expense will be available for participants traveling over 45 miles from their court. Rooms are available on a first-come, first-serve basis. Housing information will be sent upon receipt of registration.

The one-day class will be offered four times this spring:

April 18 (F)	Austin
May 30 (F)	Austin
June 24 (I)	Austin
June 25 (W)	Austin

Over lunch, participants will have a chance to talk about legal procedures in their courts with members of the TMCEC legal staff.

Judges who attended this course last year but feel they would benefit from taking the class again are welcome to register. Please call TMCEC if you have questions regarding your eligibility to attend the class.



# Academic Schedule

## NEW, NON-ATTORNEY JUDGES:

7/21-7/25, 2003 **32-Hour Judges/Clerks** Radisson Hotel & Suites Austin 512/478-9611 Registration due: 6/27

## 12-HOUR JUDGES:

4/10-4/11, 2003 **12-Hour Judges/Clerks** Holiday Inn Park Plaza Lubbock 806/797-3241 Registration due: 3/14  
5/5-5/6, 2003 **12-Hour Atty Judges** Radisson South Padre 512/478-9611 Registration due: 4/7  
5/7-5/8, 2003 **12-Hour Non-Atty Judges** Radisson South Padre 956/761-6511 Registration due: 4/7  
6/5-6/6, 2003 **12-Hour Judges/Clerks** Hilton Midland & Towers 915/683-6131 Registration due: 5/12

## JUDGES 12-HOUR SPECIAL TOPIC:

4/15-4/16, 2003 **Topic: Fine/Fee Collections** Omni Corpus Christi Bayfront Tower 361/887-1600 Registration due 3/31  
5/21-5/22, 2003 **Topic: Evidence** Omni Southpark Austin 512/448-2222 Registration due: 4/25  
6/17-6/18, 2003 **Topic: Juveniles** Omni Bayfront Corpus Christi 361/887-1600 Registration due: 5/23

## NEW CLERKS:

7/21-7/25, 2003 **32-Hour Judges/Clerks** Radisson Hotel & Suites Austin 512/478-9611 Registration due: 6/27

## CLERKS 12-HOUR:

4/10-4/11, 2003 **12-Hour Judges/Clerks** Holiday Inn Park Plaza Lubbock 806/797-3241 Registration due: 3/14  
5/1-5/2, 2003 **12-Hour Clerks** Radisson South Padre 512/478-9611 Registration due: 4/7  
6/5-6/6, 2003 **12-Hour Judges/Clerks** Hilton Midland & Towers 915/683-6131 Registration due: 5/12

## PROSECUTORS:

6/17-6/18, 2003 **Prosecutors** Omni Bayfront Corpus Christi 361/887-1600 Registration due: 5/23

## COURT ADMINISTRATORS:

6/17-6/18, 2003 **Court Administrators** Omni Bayfront Corpus Christi 361/887-1600 Registration due: 5/23

## FINE & FEES COLLECTION AND ENFORCEMENT FOR JUDGES, CLERKS, & CITY OFFICIALS:

4/15-4/16, 2003 Omni Corpus Christi Bayfront Tower 361/887-1600 Registration due 3/31

## LEGISLATIVE UPDATES FOR JUDGES & ALL COURT PERSONNEL:

8/4, 2003 **Legislative Update** Sofitel Houston 281/445-9000 Registration due: 6/11  
8/8, 2003 **Legislative Update** Omni Southpark Austin 512/448-2222 Registration due: 6/11

## CLERK CERTIFICATION LEVEL III ASSESSMENT CLINICS:

5/20-5/22, 2003 **Assessment Clinic** Omni Southpark Austin 512/448-2222 Registration due: 4/25

## COMPUTER SKILLS 101

April 18, 2003 TMCEC Offices, 1609 Shoal Creek Blvd. #302, Austin 512/320-8274 Registration due: 4/4  
May 30, 2003 TMCEC Offices, 1609 Shoal Creek Blvd. #302, Austin 512/320-8274 Registration due: 5/9  
June 24, 2003 TMCEC Offices, 1609 Shoal Creek Blvd. #302, Austin 512/320-8274 Registration due: 6/3  
June 25, 2003 TMCEC Offices, 1609 Shoal Creek Blvd. #302, Austin 512/320-8274 Registration due: 6/4

### A Reminder!

**Once registered, please call TMCEC if your housing needs change. You will be billed \$80 plus tax if you reserve a room and do not use it. If you need to change your arrival date, contact the TMCEC offices to cancel the room (or to add a night) so that grant funds won't be wasted.**

TMCEC 2002-2003 REGISTRATION FORM

Program Attending: \_\_\_\_\_ Program Dates: \_\_\_\_\_
[city]

- I also intend to attend the Mock Plea and Mock Trial Workshop or the Survey of the Rules of Evidence pre-conference class.
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: \_\_\_\_\_

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: \_\_\_\_\_ Arriving by: Car Airplane 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 Warrant Officer/Bailiff
Prosecutor
Assessment Clinic (A registration fee of \$100 must accompany registration form.)
Other: \_\_\_\_\_

\*Warrant Officers/Bailiffs: Municipal judge's signature required to attend Warrant Officers/Bailiffs 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 17-18 in the Academic Schedule. Payment is required ONLY for the assessment clinics and legislative updates; payment is due with registration form. Participants in the assessment clinics and legislative updates must cancel in writing two weeks prior to seminar to receive refund.

Participant Signature

Date

The Texas Municipal Courts Education Center presents a FREE computer basics class. The class will be offered to municipal judges and clerks at the TMCEC offices in Austin, Texas. The session is designed for only judges and clerks *brand new* to computers. Very basic instruction will familiarize the learner with the computer, its components, and terminology and will provide hands-on training in word processing and spreadsheet software and Internet and email usage.

## Computer Skills 101

1609 Shoal Creek Boulevard #302, Austin, TX 78701

*(Class will be held at the TMCEC Offices in Austin)*

### TENTATIVE AGENDA



- 10:00 a.m. *Welcome and Announcements*
- 10:05 – 10:15 a.m. **Introduction to the Computer and Mouse Skills Development**
- 10:15 – 11:30 a.m. **Computer Basics, Common Terms, and File Management**
- 11:30 – 1:00 p.m. *Lunch (provided by TMCEC)*
- 1:00 – 2:00 p.m. **Introduction to Word Processing and Spreadsheets**
- 2:00 – 2:15 p.m. *Break*
- 2:15 – 3:15 p.m. **Exploring Email and the Internet**
- 3:15 – 3:30 p.m. **Troubleshooting**
- 3:30 p.m. *Adjourn Seminar*

Lunch is provided and participants will have a chance to talk about legal procedures in their courts with Clay Abbott, Margaret Robbins, or Ryan Turner.

Enrollment is limited to the first 15 respondents for each program. Mail or fax this enrollment form today! Participants must be present when class starts promptly at 10:00 a.m. (TMCEC will call you if you are **not** one of the first 15 respondents)

A limited number of hotel rooms for a one-night stay at grant expense will be available for participants traveling over 45 miles from their court. Rooms are available on a first-come, first-serve basis. Housing information will be sent upon receipt of registration.

**Choose to attend  
one of four dates!**

- Friday, April 18
- Friday, May 30
- Tuesday, June 24
- Wednesday, June 25

*Computers provided by the Judicial Committee on Information Technology and the Office of Court Administration.*

### Registration Form

#### COMPUTER SKILLS 101

Name \_\_\_\_\_

#### HOUSING INFORMATION

*(For those traveling over 45 miles from Austin)*

- Yes, I need a single-occupancy room.
- Yes, I need a double-occupancy room.
- No, I do not need a room at the seminar.

Arrival date: \_\_\_\_\_

Smoker  Non-Smoker Gender: \_\_\_\_\_

#### COURT MAILING ADDRESS

Office Telephone \_\_\_\_\_

Office Fax \_\_\_\_\_

E-mail \_\_\_\_\_

City Represented \_\_\_\_\_

Date Hired \_\_\_\_\_

*Please note: This course is designed specifically for the novice computer user. Instruction will be very basic and may not offer a challenge for a computer user with elementary computer experience. Please call TMCEC if you have questions regarding your eligibility to attend.*

Already have access to a computer?  Yes  No

Type of computer:  PC  Macintosh

Computer experience in months or years: \_\_\_\_\_

Have you attended a TMCEC computer course before?  Yes  No

Which of the following would you like to spend more hands-on time learning?

- Word Processing (letters, forms)
- Spreadsheets (budgets, small databases)
- Internet Access/Email

*I certify that I am currently a municipal court judge or clerk in the State of Texas. I agree that I will be responsible for any costs incurred if I do not cancel ten (10) working days prior to the seminar.*

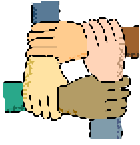
Participant Signature \_\_\_\_\_

Date \_\_\_\_\_

*Fill out and return to:*

**TMCEC**  
1609 Shoal Creek Blvd. #302, Austin, TX 78701  
512/320-8274 or 800/252-3718  
Fax 512/435-6118





# INSIGHTS INTO DIVERSITY

Rule 11(b) of the Rules of Judicial Education promulgated by the Texas Court of Criminal Appeals requires that “Judicial education entities shall provide training in ethics, which must include information about issues related to race fairness, ethnic sensitivity, and cultural awareness.” TMCEC has adopted a multi-faceted, integrated approach to this requirement by offering both classes and publications on the diversity, cultural sensitivity, and bias issues.

In FY 02, a discussion on perceptions of bias, biased behavior, and ethics sanctions related to bias in court was presented in the *Ethics* course that all judges attended at every 12-hour program. Also, a breakout session was offered on *Diversity Issues in Court* to clerks at eight of the nine 12-hour programs. This year, all judges at TMCEC 12-hour programs attend a general session on *The Law of Racial Profiling* offered by W. Clay Abbott, TMCEC General Counsel. Also, during all TMCEC 12-hour programs, judges have the option of attending a breakout session on *The Importance of Diversity & Cultural Awareness in Municipal Court* taught by Judge Ana Otero (City of Houston), and clerks attending the Assessment Clinic participate in *Team Dynamics and Coaching in a Diverse Environment* presented by Dr. Richard Lewis and Siri Bletzer (Round Top Consulting Associates, San Antonio).

In addition, TMCEC released a special edition of *The Recorder* last August, and will now offer a regular column in the newsletter. It is hoped that, with frequent reminders and additional information, municipal judges and court support personnel will become and remain committed to reducing bias in their courts. Readers are invited to send in comments or write articles for publication in this column.

## Introduction to Diversity

### The Meaning of Diversity

According to most dictionaries, diversity means “difference” or “variety.” In the words of court and human resource management, it is a difference that makes a difference. Some may say that “We’ve always had people who were different.” This is true but never to the extent that we are now seeing in our courts. It is estimated that by 2050 nearly, one-half of the U.S. population will be members of some racial or ethnic minority – double the percentage today. Today persons of diverse backgrounds often no longer seek to assimilate totally into our mainstream society, but take pride in their unique identities.

It is important that courts develop a diversity management program so that they create an atmosphere within the organization where individuals are

able to appear (and work) successfully without influence from group membership. If a problem involving racial, cultural, or ethnic biases exists in your court, any of the following steps may be appropriate:

- Begin by monitoring your own behavior
- Offer cultural awareness seminars for court personnel.
- Let a colleague know that you found a racial slur or joke to be offensive and will report it to your supervisor if he or she continues.
- Express your concerns to an associate judge with your observations about his or her patterns of setting bail or sentencing.
- Report violations of the Code of Judicial Conduct to the Commission on Judicial Conduct (512/463-5533).

### Primary Differences

- Sex
- Age
- Able-Bodied/Disabled
- Racial/Ethnicity/National Background
- Cultural/Religious Background

### Secondary Differences

- Educational Level
- Exempt/Non-Exempt Status
- Work Experience
- Geographic Origin
- Goals & Ambitions
- Income
- Life Style
- Parental Status
- Personality

- Recruit more minority personnel by advertising in minority newspapers or post jobs at neighborhood community centers.

TMCEC recommends that every court conduct a self-audit to determine its level of tolerance and to become aware of its own institutional and individual prejudices and biases. Shown on the following page are sample survey questions. It is recommended once court personnel complete the survey, that a staff discussion be held to review the issues and form an action plan to begin reducing bias in court. A bias-free court requires tolerance, awareness, communication, and leadership. Start today with an “in-house” awareness session. 🗑️

Source: Adapted from “Managing a Diverse Workforce.” *Trainer’s Workshop*, a publication of the American Management Association, 1993.

**CANON 3: Performing the Duties of Judicial Office Impartially and Diligently**

**B. Adjudicative Responsibilities.**

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

(7) A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status against parties, witnesses, counsel or others. This requirement does not preclude legitimate advocacy when

**C. Administrative Responsibilities.**

(1) A judge should diligently and promptly discharge the judge’s administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge should require staff, court officials and others subject to the judge’s direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

**Handout for In-House Court Awareness Session**

**Working in a Bias-Free Court**

Please write True or False in the space provided before each question. Feel free to add comments after each statement. We will meet in small groups to discuss the responses and plan a diversity program for our court.

1. \_\_\_\_\_ We have no problems resulting from diversity in our court.
2. \_\_\_\_\_ Discriminatory language and behavior are things of the past.
3. \_\_\_\_\_ Our court treats everybody the same.
4. \_\_\_\_\_ If you hear a slur about a particular ethnic group, it’s better to ignore it than to speak out and make a scene at work.
5. \_\_\_\_\_ People who can’t speak English have a personal problem and should not appear in court until they have solved it.
6. \_\_\_\_\_ Everyone in our court is treated with equal respect, regardless of education or social background.
7. \_\_\_\_\_ Defendants with attorneys are given greater respect than *pro se* defendants.
8. \_\_\_\_\_ Men and women are treated equally in this court.
9. \_\_\_\_\_ Sometimes I feel that people here tend to put labels on others who are different from them.
10. \_\_\_\_\_ There is no religious prejudice in our organization.
11. \_\_\_\_\_ It would not bother me to work closely with a gay or lesbian employee.
12. \_\_\_\_\_ I sometimes think that certain groups of people get lighter sentences or lower bond amounts than others.
13. \_\_\_\_\_ I am clear about our court’s policy on appointing interpreters.
14. \_\_\_\_\_ Only U.S. citizens have rights when they appear in municipal court.
15. \_\_\_\_\_ Our court does not discriminate against older persons who apply for work here.

## E-mail—To Delete or Not To Delete

Presently, your court has an approved Control Schedule or Declaration of Compliance with the Local Government Records Retention Schedules for all the court's paper records, right? The court has policies and procedures, records retention schedules, and the staff is fully trained on how to handle those records. What about the electronic mail (e-mail) that the court receives and sends every day? How does the court handle those records with regards to records retention policies? Good question.

Records management principles do apply to e-mail records. Generally, it is the same principles that apply to hard-copy records, including: appraisal, classification, scheduling, holds, and destruction. The one major difference is in the implementation of retention standards. Paper records management rules have developed over centuries; e-mail is barely ten years old. Meaning the rules are not clearly defined, but there are some agreed upon guidelines to follow.

An important aspect of e-mail retention is that e-mail is NOT a document type; e-mail is a delivery mechanism. E-mail represents the specific format, not the record itself. Meaning, e-mail messages should be reviewed individually to determine their value as a record, not overall as a medium. It is the content and function of an e-mail message that determines the retention period for that message. All e-mail sent or received by a court is considered a government record and should be treated as such. Therefore, all e-mail must be retained or disposed

of according to the government's retention requirements. According to the *Model Policy for Records Management Requirements for Electronic Mail for Local Governments*, e-mail generally (but not always, see *Local Schedule GR*) falls into two common record series categories<sup>1</sup>. These are:

Administrative - Correspondence and internal memoranda pertaining to or arising from routine administration or operation of the policies, programs, services, and projects of a local government. (Retention: two years.)

Routine - Correspondence and internal memoranda such as letters of transmittal, requests for publications, internal meeting notices and similar routine matters. (Retention: AV, after purpose of record is no longer deemed "administratively valued.")

E-mail messages that have been judged as retention worthy may be saved for their approved retention period by one of the following<sup>2</sup>:


1. Print the message and file an appropriate hard-copy file.
2. Place in folders and save on a personal network drive or C:/ drive (your hard disk).
3. Save to a removable disk.
4. Transfer to an automated records management software application.
5. Manage at the server by an automated classification system.

To dispose of the records, the same requirements exists as for paper records. Section 202.001, Local Government Code, states that local government must ensure electronic records are disposed of in a manner that ensures protection of any confidential information, and magnetic storage media containing confidential information is not reused if the previously recorded information can be compromised by reuse in anyway. Also, it is advised that local governments keep some type of log regarding the destruction of electronic records.

In deciding where to go from here, answer the following questions<sup>3</sup>:

1. Does your court have inadequate policies and procedures regarding e-mail, or are there no policies at all?
2. Has your staff been trained on how to deal with e-mail records?
3. Have you solved the e-mail dilemma by keeping all e-mails forever, or by deleting everything?
4. Does your court rely on individual users to make retention decisions?
5. Does your court have an approved records retention schedule at all?

Think about your answers to these questions. If you need to take another look at your e-mail retention, or even paper retention, contact the Texas State Library and Archives

Commission ([www.tsl.state.tx.us](http://www.tsl.state.tx.us)). Remember, in order to deal effectively with e-mail retention the court must have comprehensive policies and procedures, enabling technologies, communication and training, and monitoring and audits. The next *Tech Corner* article will focus on writing an effective e-mail policy for your court, so stay tuned. 

<sup>1</sup> *Local Schedule GR*, 1000-26, Correspondence and Internal Memoranda.

<sup>2</sup> From the *Model Policy for Records Management Requirements for Electronic Mail*, Local Government. Contact Texas State Library & Archives Commission, [www.tsl.state.tx.us](http://www.tsl.state.tx.us).

<sup>3</sup> From a presentation given on February 24, 2003 by Bob Guz, Managing Director, Iron Mountain Consulting Services.

## Help Us Update Our Database!

TMCEC is seeking to update its list of bailiff/warrant officers and prosecutors. Please send the names of the persons in your court that work in this position:

Name of Court: \_\_\_\_\_

Bailiff: \_\_\_\_\_

Warrant Officer: \_\_\_\_\_

Prosecutor: \_\_\_\_\_

Person completing form: \_\_\_\_\_

Position Title/Telephone Number: \_\_\_\_\_

**Return completed form to:  
TMCEC, 1609 Shoal Creek Boulevard, Suite 302, Austin, TX 78701  
Fax: 512/435-6118**

Every court returning this form by May 1, 2003 will get a free gift: one of the TMCEC publications. We will call you and ask which publication you prefer.

Thank you for your assistance.

**TEXAS MUNICIPAL COURTS  
EDUCATION CENTER  
1609 SHOAL CREEK BLVD., SUITE 302  
AUSTIN, TX 78701  
[www.tmcec.com](http://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