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Interlocal Agreements for Jail Service

Don't Get Locked into a Bad Contract

By Cary L. Bovey, Attorney at Law, Bovey, Akers & Bojorquez, L.L.P., Austin

For many years, Texas local governments have cooperated with each other in the delivery of services to the public and in the performance of governmental functions. As costs continue to rise and the demand for services and governmental functions increase, cities and counties have found it beneficial in many instances to enter into interlocal contracts in an attempt to address the growth in costs and surging demand for services.

The provision of jail services is an area in which local governments have benefited from cooperation with each other. Texas municipalities have commonly contracted with the county to provide space in the county jail to house inmates who would normally be incarcerated in the municipal jail. Cities enter into these arrangements for a variety of reasons, but are more often motivated by the desire to save money rather than incur the costs necessary to construct and operate a municipal jail. For smaller cities, the issue can be one of necessity, because many smaller municipalities simply do not have the funds required to build and run a city jail.

Some cities have an informal "arrangement" with the county to house municipal inmates, believing it is not necessary to memorialize the "arrangement" into a formal written agreement. This is not advisable because unforeseen disputes may arise. Contracts are written to address the unforeseen disputes and situations neither party anticipates will or desires to occur, therefore, it is necessary to

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Focus on ... Bail Bond Forfeitures

By David L. Finney, Assistant Criminal District Attorney, Denton County

Texas municipal courts have authority to collect bail bond forfeitures. While the procedures are the same as those employed in the courts in counties, the players are not always the same. Article 4.14(e), Code of Criminal Procedure, gives authority and jurisdiction over bail bond forfeiture prosecutions to the municipal court in all cases where the court has jurisdiction of the criminal case in which the bond was given. The city attorney or deputy city attorney, acting as the municipal prosecutor, prosecutes municipal bond forfeitures. Article 45.201, Code of Criminal Procedure, provides that the municipal prosecutor, rather than the local district or county attorney, represents the State in municipal court. Duties performed by the county sheriff—such as the service of process—are performed by a peace officer or marshal of the municipality under Art. 45.202, C.C.P. All of the reasons that a county should prosecute bond forfeitures—revenue, respect, and accountability—are equally valid in Texas municipalities.

No matter if your city is rural or big-city, you can prosecute bail bond forfeitures. Here is a primer on getting started.

While the prosecution of bail bond forfeitures is not particularly difficult, it

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AROUND THE STATE

TMA Annual Meeting & Conference in Austin in April

The Texas Marshal Association (TMA) Annual Conference & Training Seminar will be held April 4-8, 2004 at the Lakeway Inn, located just west of Austin on Lake Travis. TMA is a non-profit organization that provides law enforcement and court security training to its members on a state level. Membership consists of city marshals, warrant officers, bailiffs, and court personnel from across Texas.

In addition to the Association's annual business meeting, a 16-hour course on *Court Security* will be offered that includes many pertinent issues, such as physical security, bailiff duties, courthouse safety measures, weapons detection, evacuation, bomb threats, searches, security during trial, first responder negotiations, verbal control, negotiations techniques, and hostage survival. On the third day, *Strategies for Living: A Life-Balancing Workshop* will be offered, followed by a presentation by a retired Secret Service agent on the Kennedy assassination. The conference closes on Thursday morning with an optional four-hour *Identify Theft* course. Fun evening activities are planned, including a dinner cruise.

The registration fee is $250 for members and $310 for non-members if a participant registers before March 15, 2004. After that date, there is a $50 late fee. Single rooms are available for $80 each, plus tax. The housing deadline is March 4, 2004. Contact the hotel directly (800/525-3929) and ask for the TMA government rate. For additional information about the conference or to register, contact Ron White, TMA President at 817/430-0936.

TMCEC works closely with TMA in planning its bailiff/warrant officer programs. TMA provides excellent opportunities for members to network with other members throughout the state. Some of the advantages of being able to network with TMA members are the sharing of ideas and the pooling of resources. The Association sponsors local warrant roundups and assists its members in cooperative efforts. For more information, visit the TMA website at www.texasmarshals.org.

GCAT Conference

The Government Collectors Association of Texas (GCAT) conference on fines and fees collection will be held in Galveston June 2-4, 2004 at the San Luis Resort. Call 512/936-7557 for more information. The agenda will be designed for judges and court support personnel from all trial courts in Texas. Municipal judges and court support personnel who have attended in the past have highly rated the program for its practical, yet innovative approach to increasing court collection rates.

FROM THE GENERAL COUNSEL

W. Clay Abbott

Article 15.18 Out-of-County Pleas (or Random Acts of Judicial Discretion)

Despite the fact that it has been on the books for more than two years, no provision in the law has caused more consternation and grief than Article 15.18, Code of Criminal Procedure. This provision gives any magistrate jurisdiction and judicial authority over any fine-only criminal case if the offender is brought before them on a warrant issued from a court in another county. The judicial authority is predicated on a written plea of guilty or *nolo*. The magistrate has the judicial authority to accept the plea, set a fine, determine cost, give jail credit, determine indigency, accept payment, and to discharge the defendant. In practical terms this means that, without notice and on one case at a time, a visiting judge blows in with different forms, procedures, and legal interpretations and resolves the case of one of the court's most irritating defendants. Big surprise: This can cause some turmoil.

In all fairness, the legislative change was made to help jail crowding and reduce prisoner transportation cost. The procedure has not been legally challenged, nor would I expect it to be. Attempts at legislative correction have fallen in the "guess it didn't pass" stack. So we are stuck with it. What follows is my practical advice for taking 15.18 pleas and for handling 15.18 pleas—even ones that have been done "wrong."

The first suggestion I make is that, if a magistrate plans on taking a 15.18 plea, a telephone call would be nice. The statute imposes no obligation upon the magistrate to notify the court, but common courtesy and minimal social awareness seem to justify a call. Many magistrates work nights and weekends. This makes a call before taking a plea difficult, but very few courts operate without an answering machine. I don't know of any police department that does not have someone answering telephone calls, even in those lonely, quiet early morning hours. Courts issuing warrants out-of-county may also consider putting a telephone number and request for notification with the warrant. Who knows, it might work.

Secondly, complete a judgment! No judge should be finding people guilty, collecting fines, or incarcerating defendants without a written judgment. If a magistrate decides to take on the role of a judge with jurisdiction, nothing in Art. 15.18 relieves him or her of any ethical, constitutional, or procedural duty imposed on the court. A completed judgment would also resolve the great majority of the problems I have received calls on from around the state. A failure to prepare and sign a judgment is not only the failure of the jail staff, it is misconduct by the magistrate. Very bluntly, a magistrate shouldn't act like the judge if not competent to handle it; that includes the paperwork.

Finally, Art. 15.18(b), C.C.P., specifically requires that an out-of-county magistrate send the written plea, judgment, and any fine or cost collected to the court with jurisdiction before the 11th business day after the plea. Failure to perform this duty violates the statute and, presumptively, the magistrate's ethical duties. The magistrate should never delay prompt remittance based on this provision since the defendant could be rearrested, contacted, or otherwise disadvantaged. Time is of the essence when dealing with warrants and judgments both.

The court receiving notice that it has been the recipient of a "random act of judicial discretion" under Art. 15.18 also has several obligations. Primarily the court has a duty to promptly accept, record, account, and credit the judicial order. The clerk should make sure the judge is notified. The statutes do not provide any means or authority for the sitting judge to modify, amend, or correct the magistrate's orders. The receiving court should report convictions, track discharges or payment of the fine and cost, and follow up on orders granting DSC or granting deferred disposition. Unpaid or undischarged fine amounts should be collectable, just like fines imposed by the sitting judge.

Most importantly, warrants and holds should be lifted immediately. Once the judgment is rendered, there is no further justification for arrest under the now fully executed judgment. Failure to do this or to create a procedure to do this could result in clear violations of a defendant's constitutional right and the incumbent litigation and liability.

The greatest problem with this scheme is what to do if there are errors, omissions, or general blunders in the out-of-county magistrate's orders. What may the court with original jurisdiction do? The answer is that the court probably has no recourse. As noted earlier, the out-of-county magistrate may assume jurisdiction unilaterally without notice or consent. The out-of-county magistrate has the same

authority as a judge in the court. The presiding local judge is given no special review or modification powers. The defendant is certainly entitled to rely on the orders of the out-of-county magistrate. Unfortunately, the only remedy is ordering a new trial (which would be procedurally impossible and likely barred by the passing of time) or appeal by the State (equally difficult and also likely barred by the passage of time).

My final advice is the kind your mother would give. Be courteous, prompt, and patient.

A Retraction of Sorts

In the December 2003 *Municipal Court Recorder*, Ryan Kellus Turner summarized a number of Attorney General Opinions from the previous year. One of those opinions was JC-0544, issued August 4, 2002. The opinion stated that general-law municipalities could not reassign to any other employee budget duties assigned to the mayor by Sec. 102.001, Local Government Code. The only exception—the opinion note—was when the municipality adopted a city manager scheme under Chapter 25, Local Government Code.

At the request of both the Texas Municipal League and the Texas Attorney General's Office, our review of that Opinion needs to be clarified. First, the Opinion says exactly what Ryan said it did. Second, the Legislature met since the Opinion was issued and the law changed.

The 78th Texas Legislature passed SB 734 on May 28, 2003, which amended Chapter 25 of the Local Government Code. Specifically, general-law municipalities were given broad authority to prescribe the powers and duties of municipal employees. This legislative enactment effectively negates JC-0544. I hope this oversight did not cause any problems.

Other AG Opinions

On November 25, 2003, the Attorney General issued Open Records Decision No. 680. That opinion concerned a police department giving a school district information about Minor in Possession charges against persons under age 17. Citing Sec. 58.007(c), Family Code, the opinion held that such records were confidential under that section. Sec. 58.007(c), F.C., concerns law enforcement releasing juvenile offender information. The Attorney General reasoned that, since the municipal or justice court could transfer the case to the juvenile court, the information was "juvenile justice information" covered by the statute.

It is important to note that the Opinion and the statutes it interprets involve only law enforcement agencies and their obligations. But, the Opinion points to a bit of a gap in municipal court obligations concerning juvenile offenders' records. Family Code provisions requiring juvenile courts to keep hearings and records confidential do not control municipal courts. Municipal courts prosecute juvenile offenders for criminal conduct, not delinquent conduct. What happens if a municipal court waives jurisdiction and transfers a case to the juvenile court—either in its discretion or as a mandatory third violation—pursuant to Sec. 51.008, F.C? If the logic of Open Records Decision No. 680 holds true, the information held by the municipal court is now confidential and subject to confidentiality rules in the Family Code. This provides special challenges to the clerk and court. Records not transferred are open to inspection under the common law principle of open courts, while transferred cases must be protected as a matter of the juvenile's rights under the Family Code. This means communication and thorough recordkeeping are a must to avoid one violation or another. A full copy of the Opinion can be accessed through the TMCEC web site at www.tmcec.com.

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address as many issues and scenarios as possible when preparing an interlocal contract. In doing so, there is less room for speculation regarding the parties' intentions.

Legal Background and Authority for Interlocal Contracting

The Texas Legislature, recognizing the value of cooperation between local governments, began over 100 years ago enacting statutes authorizing various types of endeavors between local governments. These statutes, however, were very narrowly written and often only applied to certain types of local governments and were therefore limited in their usefulness.

In 1971, as authorized by Article III, Section 64(b) of the Texas Constitution, the Texas Legislature enacted the Interlocal Cooperation Act (Article 4413(32c), Tex. Rev. Civ. Stat., and hereinafter referred to as the "Act") which is now codified in Chapter 791 of the Texas Government Code. The Act authorizes municipalities to contract with other governmental agencies, including state agencies, special districts, counties, municipalities, and other political subdivisions. The Act authorizes cities to contract with other local governments to perform governmental and administrative functions and services such as police protection and detention services, fire protection, streets, roads, and drainage, public health and welfare, parks and recreation, library and museum services, record center services, waste disposal, planning, engineering, public funds investment, tax assessment and collection, personnel services, purchasing,

records management services, data processing, warehousing, equipment repair, printing, and other governmental and administrative functions in which the contracting parties are mutually interested.

General-law municipalities, because of their restricted powers, are limited to contracting with other governmental entities as authorized under the Act or other law. Home-rule cities, pursuant to their broad home-rule authority, may contract in any manner not prohibited by law. The Act, however, does not grant any additional governmental powers and does not affect the basic structure and organization of government in Texas. The Act also provides that a person acting under an interlocal contract does not, because of any provision of the interlocal contract, hold more than one civil office of emolument or more than one office of honor, trust, or profit.

An interlocal contract must be authorized by the governing body of each party to the contract.

The Act also requires certain matters to be addressed in an interlocal agreement, including the purpose, terms, rights, and duties of the contracting parties. The interlocal contract must also specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

Payments pursuant to an interlocal contract must be in an amount that fairly compensates the party performing the service under the contract.

Additionally, the Act provides that an interlocal contract may be renewed annually. In the case of a multi-year contract, it is necessary to renew or approve the contract on an annual basis because of the language in the Act requiring payment only from current funds. This requirement is in line with the general rule that revenues may not be obligated beyond the current fiscal year except in specific circumstances, such as the issuance of bonds.

The Act also allows the rules, regulations, and ordinances of any party to an interlocal contract to be used to govern contractual performance as the parties may agree.

Finally, the Act authorizes the contracting parties to create a separate agency or designate an existing political subdivision to supervise the performance of an interlocal contract. The Act further provides that such an agency or political subdivision may employ personnel, perform administrative activities, and provide administrative services necessary to carry out the terms of the interlocal contract.

Interlocal Contracts for Jail Services

In addition to the provisions that are required by the Interlocal Cooperation Act to be in an interlocal contract, there are issues particular to jail services that should be addressed in an agreement.

The agreement should address the amount of compensation to be paid for the housing of inmates. As noted above, payments pursuant to an interlocal contract must be in an amount that fairly compensates the party performing the service under the contract. Additionally, the interlocal contract should address the basis on which payment will be made (*e.g.,* charge for each inmate per day, yearly lump sum, monthly or quarterly flat fee, actual expenses incurred, capacity of jail required by city, or some other basis).

An interlocal contract should allocate responsibility for the costs of medical care of the city inmates housed in the county jail. Generally, from a city's perspective, when an inmate is accepted into the jail by the county, the county is responsible for meeting the basic human needs and medical care of the inmate. This is tempered by the fact that a county jail is under no duty to accept persons arrested for violating a purely local ordinance. However, the county jail does have a duty to provide for the needs of inmates housed in the county jail for violating ordinances implementing state law (*e.g.,* local ordinance implementing state traffic laws). [Attorney General Opinion No. MW-52 (1979); Attorney General Opinion No. JM-1009 (1989)]

Therefore, as a compromise, cities may agree to bear the costs of medical care of the city inmates that are charged with violation of city ordinances and Class C state law misdemeanors that are within the jurisdiction of the municipal court. As a practical matter, however, the custom of many municipal judges is to release city inmates prior to any significant medical care costs being incurred by the city.

Other issues specific to jail services that the parties may want to address in the interlocal agreement include the terms and conditions regarding the county's acceptance of inmates upon presentation by city, guaranteed number of city inmates that will be accepted by the county, responsibility for the transportation of city prisoners to municipal court, conditions of release of city prisoners, *etc.*

Other Provisions Applicable to All Interlocal Contracts

Finally, there are many standard contractual provisions that the parties should consider for inclusion in an interlocal contract. These types of provisions include, but are not limited to, definition of terms used in the contract, nature of the services to be performed, the legal authority under which the contract is authorized, reference to any standards to be observed or applicable federal, state, or local laws and regulations, indemnity and liability allocation between the parties, amount and basis of

compensation, procedure for payments, administrative control and responsibility for the contract, review of adjustment of charges/compensation, force majeure, term of contract, requirement that amendments to contract be written, procedure for termination, assignability of contract, non-discrimination provision, severability clause, procedure for resolution of disputes between the parties, venue for any litigation arising under the contract, procedure for written notice to other party, and the recovery of attorney fees to the prevailing party in the event of any claim or lawsuit arising out of the contract.

Conclusion

Cities and other local governments have successfully utilized interlocal contracting as a tool for more efficient use of local resources. Care should be taken in the drafting of an interlocal agreement to ensure that the contract contains the provisions required by the Interlocal Cooperation Act. Additionally, it is important to address the specific issues that are raised by the type of governmental functions or services to be provided for under the interlocal agreement. It is my hope that you are able to use the information contained herein to craft an effective interlocal agreement regarding the provisions of jail services.

Cary L. Bovey is a founding partner of the law firm Bovey, Akers & Bojorquez, L.L.P. located in Austin, Texas. Bovey, Akers & Bojorquez, L.L.P. is exclusively dedicated to representing municipalities throughout Texas.

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can be both time and paper intensive. Large cities have sufficient resources and personnel to engage in a comprehensive bail bond operation, but the majority of Texas cities are limited in both the time and the staff available to prosecute bail bond forfeiture cases.

Bond forfeitures are criminal in nature, but follow the Rules of Civil Procedure.[1] In essence, the State is suing to collect the debt created by the contract (bond) for the appearance or return of the principal (defendant) which the bondsman has guaranteed (surety). The ever-present conflict is the final value of the return, or failure to return, the principal to the State's custody.

Since the last federal census, a number of cities have struggled through the creation of bail bond boards and the changes they bring to the bail bond community. Counties with populations of 110,000 or more have mandatory bail bond boards.[2] Counties with populations of less than 110,000 may create a discretionary bail bond board with the same rights and powers of a mandatory board.[3] A discretionary bail bond board is created through the majority vote of the persons who would serve on the bail bond board.[4]

The advantage to having a board is greater regulation of the bondsmen, diversification of the duties to regulate bondsmen,[5] and a few legal advantages in the prosecution of bail bond forfeiture cases.[6] The disadvantages include more meetings for elected officials, more people involved in the regulation of bondsmen, and a greater bureaucracy overall.

Each city without a bail bond board should consider whether the city would benefit from the creation of a board or whether a board would really matter in the operation or prosecution of city or county business. Once this determination has been made, the city should proceed accordingly. A bail bond board must be created by a county and may not be created solely by a municipality.

Philosophy and Education

If your city has never prosecuted bail bond forfeitures and you want to start prosecuting them, one of your first tasks will be to develop a philosophy of prosecution. What is a philosophy of prosecution? The city prosecutor must determine what goals he or she has for bail bond forfeiture prosecutions, when and under what circumstances cases should be settled or should be tried, and what ranges of settlement should be available.

Once you have determined and articulated your philosophy and goals, you must begin to educate the players in your bail bond game. There is no right place to begin the education process but, logically, it begins with the self-education of the prosecutor's office and the development of a prosecution strategy and proceeds through the warrant officer, clerk, and court. The primary purpose of the bail bond forfeiture program, of course, is to return the defendant (principal) to custody, allowing the criminal prosecution to continue. The by-product of the program is income for the general fund of the city.[7] The city council will appreciate the by-product far more than the purpose.

Each legislative session, the bondsmen and their lobbyists portray the bail bond prosecutors as a group of greedy iconoclasts and complain to the Legislature that there is little or no consistency in the prosecution of bail bond cases. One of our goals in the prosecution of bail bond forfeitures should be the consistent application of the law. Consistency in applying the law,

however, still leaves considerable discretion for local philosophies on the prosecution or settlement of cases.

Prosecution

The prosecution of a bail bond case begins with the setting and proper execution of the bail bond. The court, sheriff's office, or detention facility accepts bail bonds in both board and non-board counties. Be sure that the agencies who accept bail bonds check each bond carefully to be certain that the bond meets all the requirements of a bail bond,[8] is properly signed, is readable, and has sufficient information to identify and serve citation on both the principal and the bondsman (surety). If the surety is an insurance company, the person accepting the bond also needs to be sure that a power of attorney is attached to each bond.[9] Remember also that the magistrate may set the amount of the bond, but may not set the type of the bond.[10] It is also good to remember that the bond may be used only to secure the appearance of the principal and not for fines, fees, and costs. [*Id.* and *Trammel v. State*, 529 S.W.2d 528 (Tex. Crim. App. 1975); *McConathy v. State*, 528 S.W.2d 594 (Tex. Crim. App. 1975); and *Grantham v. State*, 408 S.W.2d 235 (Tex. Crim. App. 1966)] It is possible to use a cash bond for fines, fees, and costs, however, you must have the express consent of the defendant to use the cash bond in such a manner.

Once the principal has failed to appear in court, the prosecutor should present a judgment *nisi* to the judge of the court where the failure to appear occurred. While the judge is not required to sign the judgment *nisi* on the same day as the principal's failure to appear, the judge should sign it as soon thereafter as is practical.[11] The judgment *nisi* is the basis of the State's case for forfeiture and becomes the State's petition.[12] The judgment *nisi*, a copy of the bond, and the citation should be served upon the principal and surety in the same manner as any other civil suit.[13] Please note, however, that a bond forfeiture requires "magic words" in the citation.[14] The magic words are, "... to show cause why the judgment of forfeiture should not be made final." Failure to include the magic words may be fatal to the citation. You may need to spend some time with the clerk to review the service of citation in bond forfeiture cases as a part of your education process.

Service of Citation

One of the biggest problems in bond forfeiture cases is obtaining jurisdiction over the proper parties. Property bail bond companies have individual owners who should be served citation in their individual capacities. For example, if Sam Spade owns Ace Bail Company, the proper party in a bond forfeiture is Sam Spade d/b/a Ace Bail Company. Ace Bail Company is merely an assumed or trade name ("d/b/a") and is not an entity with the full capacity to sue or be sued.[15] Sam Spade is the real party in interest, and you should serve him with citation for a bail bond forfeiture. A judgment against Ace Bail Bonds may not be enforceable against Sam Spade and may be uncollectible against Ace.

Unlike an assumed name company, a corporation is an entity having the capacity to sue or be sued, but a corporation may not be a bail bondsman.[16] However, there is an exception to that general corporate rule: Insurance companies that have obtained authority from the Texas Department of Insurance may write surety bonds.[17] An insurance company without authority from the Department of Insurance may not write bail bonds.[18] Insurance companies have local bail bond agents who run the day-to-day bail bond business of the insurance company, but the agents have no liability to the State for the bonds. You must serve citation on the insurance company in a bond forfeiture, not on the local agent. Although you may deal with local agent Bill Bond, he is merely the agent for Acme Surety Company. He does business locally under the trade name of Easy Bail. To obtain proper jurisdiction for a bail bond forfeiture for Easy Bail, you must serve citation on Acme Surety Company. It is likely that Acme will have a registered agent for service of process (citation). If you have a bail bond board, that registered agent should be on file with the board. If you do not have a board, you may contact the Office of the Secretary of State and obtain the name and address of Acme's registered agent.

In Denton County, for example, Acme would be served with citation as follows: Acme Surety Company, Bill Bond, Agent, d/b/a Easy Bail, by and through its registered agent, C.T. Corporation, c/o Jean Phelps, 350 North St. Paul Street, Dallas, Texas 75201. The use of local agents, trade names, and registered agents often allows insurance companies to avoid liability on bail bonds. You may have bond forfeiture citations served in person, by certified mail, or even by publication.[19] The proper party for the service of citation is the same in bail bond forfeiture cases regardless of whether you have a bail bond board or not.

Trial and Defenses

After service of the citation, the principal and surety have until the first Monday after the expiration of 20 days from the date of service to file an answer.[20] If either or both fail to answer in a timely manner, the State may take a default judgment against either or both, depending upon the facts of service and the filing of an answer. A default judgment against only one party is interlocutory unless the active parties and defaulted parties are severed. The severed default becomes final after 30 days, presuming that a motion for new trial or a notice

of appeal is not filed. If an answer is filed, the answering party is entitled to 45 days notice of the trial date and may have a jury trial, if requested properly.[21]

At trial, the State has the initial burden of proof. The State may, however, be able to submit a wholly documentary case if neither the principal nor the surety deny the execution of the bond in a sworn pleading. The State's case must include the bond and judgment *nisi*.[22] It has been agreed, generally, that a court may take judicial notice of the judgment *nisi* and the bond.[23] The better practice is to admit certified copies of the bond, judgment *nisi*, and certificate of call, if available, under Texas Rule of Evidence 902.[24] After the court admits the State's documents, the State will usually rest; once the *prima facie* case has been established, the burden shifts to the principal and surety to show why the forfeiture should not be made final.[25] Before you spring this procedure on an unwary judge at trial, you may wish to spend some time with the judge reviewing the Code of Criminal Procedure Chapters 17 and 22. The shifting of the burden and a wholly documentary case are somewhat rare for the State. Your duty to educate on bail bond issues and their idiosyncrasies extends even to the judiciary.

The majority of the trial on the merits of a bond forfeiture consists of the principal, who rarely appears, or the surety attempting to explain to the court (read that "whine") why it is unfair to take any of the bond, much less all of it, and to assess the costs of court. Every imaginable excuse will be proffered. Fortunately, only statutory excuses (defenses) will suffice.[26] There are only five primary, statutory defenses: (1) The bond is, for any cause, not a valid undertaking; (2) The death of the principal before the time of appearance (forfeiture); (3) The State's failure to present an indictment or information at the first term of the court after the principal is admitted to bail (this is rarely used); (4) The sickness of the principal or some uncontrollable circumstance prevented the principal's appearance in court (through no fault of the principal); and (5) The incarceration of the principal in any jurisdiction in the United States.[27] Surprisingly, the lack of actual notice of the hearing, trial, or any other appearance is not a defense.[28] Unless the principal or surety can provide one of these defenses or can convince a judge that his or her story falls within the statutory guidelines, the State must prevail.

If the bondsman or the principal elects to challenge the bond as not a valid undertaking, he or she will likely do so at the final hearing. Unfortunately, such a challenge is not timely.[29] An excuse for the principal's failure to appear may exonerate both the principal and the surety, but the excuse must not only be an uncontrollable circumstance, it must be through no fault of the principal.[30]

Interestingly, incarceration elsewhere at the time of appearance can be a defense.[31] In the case of a misdemeanor, the 78th Legislature added Art. 22.13(5)(A), C.C.P., another cause to exonerate a surety or principal on a bond. This provision constitutes not so much a defense as a limitation of liability. In the case of a misdemeanor, the incarceration of the principal in any jurisdiction in the United States within 180 days after the principal's failure to appear will exonerate the surety and principal. If the court remits bond amounts under this provision, the court must retain interest.

Surrender of Principals

Two other points argued as a defense are the Affidavits of Surety to Surrender Principal ("ASSP")[32] and Affidavits of Incarceration.[33] The mere filing of an ASSP is not a defense.[34] The ASSP is a contingent release of partial liability[35] that only becomes a defense when a judge refuses, without legal reason, to sign the timely filed ASSP.[36] By signing the ASSP, a judge directs the clerk to issue a warrant for the principal, which is the only legal means by which the bondsman can retrieve a principal. The ASSP limits the bondsman's liability to costs of court and rearrest fees once the principal has been returned to custody. If the principal is not returned to custody, the bondsman remains fully liable on the bond and the court may not hold the bondsman to less accountability absent a settlement.[37]

The Affidavit of Incarceration allows the release of the bondsman without the intervention of a court or the prosecuting attorney.[38] If the bondsman actually surrenders the principal to the sheriff before forfeiture or submits an affidavit to the sheriff stating that the principal is incarcerated in federal custody, in the custody of any state, or in the custody of any county of this state, then the bondsman may be relieved of his undertaking.[39] This provision originally contemplated the principal's actual delivery to the sheriff, but the subsequent verification language lessened the surety's burden. The bondsman is not automatically absolved of liability but is released after the sheriff's verification of the incarceration.[40] Unlike the ASSP, the Affidavit of Incarceration is a complete release.

Remittitur

Another area of confusion in prosecuting bail bond forfeitures is the issue of remittitur. Remittitur is the process by which a verdict is diminished by subtraction.[41] Both the Code of Criminal Procedure and the old Bail Bond Act provided for remittitur in bail bond cases, and the bondsmen will tell a court that they are absolutely entitled to a refund.[42] The Bail Bond Code that replaced the old

Act, however, does not contain a provision for remittitur.[43] In 1990, the Court of Criminal Appeals held that the section of Article 22.16(c) which required a court to forbear a final judgment in a bond forfeiture for 18 months after the forfeiture was taken was a violation of the separation of powers doctrine and held that the section was unconstitutional.[44] Subsequently, the courts determined that the provisions of Article 22.16(a), which relied upon timetables established by Article 22.16(c), also contravened the separation of powers doctrine and it, too, became unenforceable.[45] Finally, in 1993, the Court of Criminal Appeals ruled that mandatory remittitur, in any form, was unconstitutional.[46]

The 78th Legislature repealed provisions regarding time limits when a bond forfeiture judgment was final. Art. 22.16, C.C.P., now addresses remittitur and when the court shall and may remit a bail forfeiture before judgment is final. Mandatory remittitur remains unconstitutional.[47]

After a review of the Texas Code of Criminal Procedure Chapters 17 and 22 and the attendant common law, you should have a fair basis for the prosecution of bail bond forfeitures regardless of whether you practice in a board county or a non-board county. There is a wealth of information available through TDCAA for prosecutors who want to prosecute or begin to prosecute bail bond forfeitures. Both TDCAA and TMCEC offer a forms manuals that contain almost all the forms you need for a successful bail bond program. (*Editor's note: Log onto www.tdcaa.com or www.tmcec.com to locate the bail bond forms.*)

Go forth and prosecute bail bond forfeitures!

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[1] Tex. Code Crim. Proc. Ann § 22.10, *Dees v. State*, 865 S.W.2d 461 (Tex. Crim. App. 1993); and *Williams v. State*, 707 S.W.2d 40 (Tex. Crim. App. 1986).
[2] Tex. Occ. Code § 1704.051.
[3] Tex. Occ. Code § 1704.052.
[4] *Id.*This roughly includes the sheriff, or a designee, a district judge with criminal jurisdiction, the county judge or a member of the commissioners court, judge of a county court or county court at law, the district attorney or an assistant, a licensed bondsman, a justice of the peace, the district clerk or a designee, the county clerk or a designee, a municipal judge, and the county treasurer. Please see the statute for greater detail and explanation.
[5] Such as transferring the duty to regulate the bondsmen from the sole responsibility of the sheriff to the board.
[6] Such as punishing a bondsman for improperly withdrawing from a bond by making him refund part or all of the fee for the bond back to the principal. Tex. Occ. Code § 1704.207.
[7] Although the funds from bail bond forfeitures go to the general fund, the Commissioners Court may direct the funds from the general fund wherever they desire.
[8] Tex. Code Crim. Proc. § 17.08. All the elements set out in the statute must be present.
[9] Tex. Code Crim. Proc. § 17.06 & 17.07; *Schnitzius v. Koons*, 813 S.W.2d 213 (Tex. App.–Dallas 1991); and *United States v. McCallum,* 788 F.2d 1042 (5th Cir. 1985). An insurance bond without a power of attorney is unenforceable against the insurance company.
[10] Op. Tex. Att'y Gen. No. JM-363 (October 22, 1985); *Ex parte Deaton*, 582 S.W.2d 151 (Tex. Crim. App. 1975); and *Ex parte Rodriguez*, 583 S.W.2d 792 (Tex. Crim. App. 1979). The magistrate may recommend a form – such as cash – but that recommendation is not really enforceable. There are several types of bonds: personal recognizance [rare], personal, cash, and surety [professional {bondsman} and private [other citizens].
[11] *Mackintosh v. State*, 845 S.W.2d 261 (Tex. App.–Houston [1st Dist.] 1992, no writ).
[12] *Cheatam v. State*, 13 Tex. Ct. App. 32 (1884); see also, *Swaim v. State*, 498 S.W.2d 988 (Tex. Crim. App. 1973).
[13] Tex. Code Crim. Proc. § 22.04 and *Hubbard v. State*, 814 S.W.2d 402 (Tex. App.–Waco 1991, no writ). If there is a surety, then the citation to the principal need only be sent regular U. S. Mail and service is complete upon posting. Tex. Code Crim. Proc. § 22.05. Despite this provision, it may be prudent to always used certified mail when serving by mail.
[14] *Id*.
[15] Tex. R. Civ. P. 28 (2002); Tex. Bus. & Com. Code § 36.10; and *Chilkewitz v. Hyson*, 22 S.W.3d 825 (Tex. 1999, on remand, review denied).
[16] Tex. Code Crim. Proc. § 17.06; Tex. Ins. Code Art. 1.14; and *Freedom, Inc. v. State*, 569 S.W.2d 48 (Tex. Civ. App.–Austin 1978).
[17] *Id*.
[18] *Id*.
[19] Tex. R. Civ. P. 106 & 107 (2002) and Tex. Code Crim. Proc. §§ 22.05 & 22.06.
[20] Tex. R. Civ. P. 15 & 239 (2002) and Tex. Code Crim. § 22.15.
[21] Tex. R. Civ. P. 245 & 216 (2002). The request must be in writing and the jury fee must be paid at least 30 days prior to the trial date.
[22] *Tocher v. State*, 517 S.W.2d 299 (Tex. Crim. App. 1975) and *Hernden v. State*, 865 S.W.2d 521 (Tex. App.–San Antonio 1993).
[23] *Hokr v. State*, 545 S.W.2d 463 (Tex. Crim. App. 1977). Recently, the Corpus Christi Court of Appeals has indicated that a court may not take judicial notice of a the bond. See, *Guy Williams d/b/a Freedom Bail Bonds v. State*, No. 13-01-00822-CV (Corpus Christi, August 8, 2002).
[24] Tex. R. Evid. 902 (2002) and *International Fidelity Insurance Company v. State*, 65 S.W.3d 724 (Tex. App.–El Paso 2001).
[25] *Hill v. State*, 920 S.W.2d 468 (Tex. App.–Waco 1996, rehearing denied, review granted, reversed on other grounds 995 S.W.2d 96) and *Bob Smith Bail Bonds v. State*, 963 S.W.2d 555 (Tex. App.–Fort Worth 1998).
[26] *Rodriguez v. State*, 673 S.W.2d 635 (Tex. App.–San Antonio 1984, no writ) and *Telles v. State*, 911 S.W.2d 820 (Tex. App.–El Paso 1995).

[27] Tex. Code Crim. Proc. § 22.13.
[28] *Yarbrough v. State*, 703 S.W.2d 645 (Tex. Crim. App. 1985) and *Alvarez v. State*, 861 S.W.2d 878 (Tex. Crim. App. 1993).
[29] *Scott v. State*, 617 S.W.2d 691 (Tex. Crim. App. 1981); *Balboa v. State*, 612 S.W.2d 553 (Tex. Crim. App. 1981); and *Watson v. State*, 32 S.W.3d 335 (Tex. App.–San Antonio 2000). A challenge to the bond must be made at the time of execution, not at final hearing.
[30] *Hill v. State,* 955 S.W.2d 96 (Tex. Crim. App. 1997) and *Reyes v. State*, 31 S.W.3d 343 (Tex. App.–Corpus Christi 2000).
[31] *Gourley v. State*, 344 S.W.2d 882 (Tex. Crim. App. 1961) and *Sanders v. State*, 312 S.W.2d 660 (Tex. Crim. App. 1958).
[32] Tex. Code Crim. Proc. § 17.19.
[33] Tex. Code Crim. Proc. § 17.16.
[34] *Apodaca v. State*, 493 S.W.2d 859 (Tex. Crim. App. 1973) and *McConathy v. State*, 545 S.W.2d 166 (Tex. Crim. App. 1977).
[35] *Id*.
[36] *Id*.
[37] *Allegheny Mutual Casualty Insurance v. State,* 710 S.W.2d 139 (Tex. App.–Houston [14th Dist.] 1986); *Apodaca* and *McConathy*, *supra*; and Tex. Occ. Code § 1704.205. The settlement provision appears to apply only the board counties.
[38] Tex. Code Crim. Proc. § 17.16.
[39] *Id*.
[40] *Id*. It is probably wise to arrange for a hold or a warrant for the principal before the surety is absolved.
[41] *Black's Law Dictionary* 1164 (5th ed. 1979). Read remittitur as "refund."
[42] Tex. Code Crim. Proc. § 22.16 and Tex. Rev. Civ. Stat. Ann. Art. 2372p-3 § 13 (Vernon 1998).
[43] Tex. Occ. Code § 1704.
[44] *Armadillo Bail Bonds v. State*, 802 S.W.2d 237 (Tex. Crim. App. 1990).
[45] *State v. Matyastik*, 811 S.W.2d 102 (Tex. Crim. App. 1991) and *Nash v. State,* 811 S.W.2d 698 (Tex. App. – Houston [14th Dist.] 1991, review dismissed 842 S.W.2d 695).
[46] *Lyles v. State*, 850 S.W.2d 497 (Tex. Crim. App. 1993) and *Bullin v. State*, 836 S.W.2d 305 (Tex. App.–Houston [14th Dist.] 1992, review refused).
[47] *Id*.

New Codes for DPS Monthly Conviction Reports

3204: Passing Authorized Emergency Vehicle

3409: Motorcycle Safety Course

Have You Logged on Lately?

Serving the Community while Avoiding Getting Served

What Local Governments Cannot Afford to Forget about Community Service and the Indigent

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

The plight of Preston Tate began more than 33 years ago in the Houston Municipal Court. Convicted of multiple fine-only offenses and facing a steep fine of $425, the law afforded Mr. Tate only one of two options: pay the fine and costs in full immediately or be committed to the local "P farm" until such time that the judgment of the court was satisfied. Other than being poor, Preston Tate did nothing to legally justify his incarceration. [For a more complete discussion of criminal debt, *Tate v. Short* and its impact on changes to Texas law see, "Pay or Lay: *Tate v. Short* Revisited" *Municipal Court Recorder*, Vol. 12, No. 3 (March 2003)].

While the Texas Court of Criminal Appeals claimed that Mr. Tate should not be able to use his financial status to avoid the consequences of his criminal misconduct, the U.S. Supreme Court overruled the Court of Criminal Appeals, and in the process found that the laws of Texas, and other states, were unconstitutional in that they violated the equal protection clause of the 14th Amendment.[1] While the Court did not altogether prohibit the use of incarceration as a means of post-judgment enforcement, it did hold that individuals without the financial resources to pay must be provided an "alternative means" of discharging the fine and costs.

More than 30 years after the U.S Supreme Court's decision in *Tate v. Short*, the implications of the decision continue to resonate in Texas and beyond. Implicit in the holding of *Tate* is the recognition that the legal system must differentiate between the crimes of the poor and the poverty in which some Americans live. Especially in the context of fine-only offenses, the law prior to *Tate* effectively made poverty itself the basis of incarceration. The decision in *Tate* blazed a pathway rich in what is today familiar terminology: installment plans, time-payment fees, indigent hearings, and community service.

As Good as Money

Anticipating the outcome of the Supreme Court's decision, the Texas Legislature repealed the controversial provision authorizing the court to order the defendant to "pay or lay out the fine." Notably, the Code of Criminal Procedure amendments were not written in light of the *Tate* decision but rather as a preemptive measure.[2] Presumably, this partially explains why Texas statutory law leaves many indigent-related issues unaddressed. (*E.g.,* Must the defendant or the court raise the issue? When must an indigent hearing be conducted? What must such a hearing entail?)[3]

Yet, despite such lingering questions, it is crystal clear that under Texas law community service constitutes the "alternative means" of discharging the fine and costs mandated by *Tate*. While the law does not provide a statutory right for the indigent to perform community service, it does protect indigent people who have not first been given an alternative means of discharging the fine and costs from being incarcerated on a *capias pro fine*.[4]

Though community service may be ordered in a host of different contexts (*e.g.,* as a term of deferred disposition or as a mandatory sanction for alcohol and tobacco status offenses), it is critical that local governments differentiate community service in these contexts from its context stemming from *Tate*. In Texas, a defendant "who is determined by a court to have insufficient resources or income to pay fines or costs may discharge all or part of the judgment by performing community service."[5] In other words, if a defendant (child or adult) is deemed indigent, under Texas law community service is as good as money.

The last sentence of the proceeding paragraph may give some readers reasons to pause. No doubt, to some, suggesting that, in the land of the almighty dollar, anything is "as good as money" is at best an incredulous statement. To clarify, "good" is a relative term. To those who view municipal and justice courts simply as a source of revenue, community service at first glance may not be viewed as "good." On the other hand, those who respect the principles that the judicial system aspires to preserve (such as equal protection under law) are likely to see things differently. The bottom line is

that, under Texas law, a defendant can discharge the judgment through the payment of money or, if deemed indigent by the court, through the performance of community service. The law requires local governments to honor both forms of currency.

More than Money, Municipal Courts are about Municipalities

It is hard to imagine anything potentially more socially constructive than service to one's community. Under Texas law, community service may only be performed for a "governmental entity or a nonprofit organization that provides services to the general public" and that "enhance(s) social welfare and the general well being of the community."[6] The language of the law fully embraces the notion that the efforts of those ordered to perform community service have the potential to assist government in the performance of its function and/or to constructively contribute to the quality of life in our communities. Blinded by the rising revenues generated by municipal and justice courts, it is easy for local governments to overlook that the subject matter of municipal and justice courts is fundamentally rooted in preserving public safety and the quality of life in our communities.[7] To this end, maintaining the integrity of local government is predicated on the ability of local officials and employees not viewing "fine-only" offenses as being only about the fine.

Outsource: In-House or a Mix?

While some courts may have the resources and authority to establish an in-house community service program, others will need the authorization and support of other local governmental entities (city council, city manager, aldermen, county commissioners). (Accordingly, the term "local government" is used in the broadest sense to include the judge and all local decision makers.) To avail itself of the benefits of community service, in the context of indigent and other defendants, a local government must make a basic decision: Will it host a community service program? Will indigent defendants be required to find community service opportunities on their own? Or will a hybrid of both options be used?

When making this decision, local officials should begin by considering the basic legal parameters set forth in the Code of Criminal Procedure:

> The governmental entity or nonprofit organization that accepts a defendant must agree to supervise the defendant in the performance of the work.[8]

The governmental entity or nonprofit organization must agree to report on the defendant's work to the court that ordered the community service.[9]

A judge may not order more than 16 hours of work per week of community service barring a judicial determination that working additional hours would not constitute a hardship for either the defendant or the defendant's dependents.[10]

Effective January 1, 2004, a defendant is considered to have discharged not less than $50 of fines and costs for each eight hours of community service performed.[11]

A defendant may discharge an obligation to perform community service by paying at any time the fine and costs assessed.[12]

With these legal parameters in mind, local governments should consider the following practical issues: control, costs, and avoiding pitfalls.

Control – In-house community service programs afford local governments greater control over the type of community service performed. In turn, there is a greater assurance that service is performed in compliance with the legal criteria set forth above (*e.g.,* supervision, nature of work, number of hours worked, documentation of work performed). In recent years, courts have reported limited instances of outside community service providers submitting false information (*i.e.,* fraudulent claims that community service had been performed).[13]

Costs – One of the greatest excuses for not having an in-house community service program is that it is simply too expensive. The reality is that the cost of having an in-house program is determined by the local government's community service plan and the manner in which the plan is implemented.

One of the best examples of an in-house community service program is in San Angelo. San Angelo's first endeavor into an in-house community service program began in 1988 in the form of a community garden. The land for the garden was leased from a church for one dollar. Supplies were donated piecemeal by local merchants. Members of local civic groups provided supervision for community service workers. Within a short period of time, an empty lot without purpose was transformed into a means of putting food on the tables of local families in need. This is just one example of how a municipality can harness the power of community service to improve the quality of lives.

How much did the community garden cost? One dollar. What is such a program worth to a community? For the families served, it is not something that can simply be assigned a dollar figure.

Not to say that community service cannot make good fiscal sense. Contrary to common misconception, community service, properly administered, can result in net cost savings. The amount of such savings is dependent upon the scope of the in-house program and the amount of local resources dedicated to the initiative. Once again, consider the example offered by the City of San Angelo. Once the community garden was established, the city expanded its community service program in an effort to reduce the city's sanitation costs. Today, that program results in a net-savings of $333,000 for the city.[14] Other cities have followed San Angelo's lead. The City of Sugar Land also has a community garden. In 2003, its efforts were acknowledged in the form of a TML Municipal Excellence Award.[15] Similar innovations in large and small towns have been recognized and are proof that good public policy can also directly translate into good publicity.

Not all in-house community service programs have to be aimed at lowering the city's bottom line. Embracing the notion that it is the responsibility of local government to serve the public, a growing number of localities have joined the Keep Texas Cities Beautiful Program. Such programs reduce the number of local eyesores by transforming weed-filled lots into flower gardens. While this may seem entirely superficial and without economic rewards, scientific research suggests that neglected property, the accumulation of trash and litter, graffiti, and other signs of incivilities invite criminal behavior and increase fear of crime.[16] Even if the fear of crime is unfounded, disorderly conditions in neighborhoods and communities can demoralize local residents and directly result in the loss of a community's economic vitality. This realization gave birth to community policing and reemphasized nationally the importance of community courts. In-house community service programs can be an integral component to the revitalization of rural and urban communities, a component some communities cannot afford to overlook.

Municipal Courts Participating in the *Keep Texas Cities Beautiful* Program

Athens
Clint
Denton
Grand Prairie
Houston
Lake Jackson
Van Alstyne

Avoiding Pitfalls – Certainly, court ordered community service could be improperly used to benefit private non-public entities or individuals. The chances for such abuses, however, are minimized when community service, rather than being outsourced, is kept in-house by local governments.[17]

Which brings us to the issue of legal liability. A surprising number of local governments have been advised by their attorneys that community service, regardless if in-house or outsourced, exposes the local government to too much civil liability. It is critical that local governments (and their legal advisors) understand that this position can potentially result in local governments actually incurring liability. While local governments are under no legal obligation to operate their own community service programs, governments that do not allow indigent individuals to discharge their fines and costs through community service effectively obstruct the only "alternative means" authorized by the Code of Criminal Procedure. Especially in light of a recent statutory definition of "indigent," local governments that refuse to allow eligible defendants to perform community service risk lawsuits alleging civil rights violations under *Tate*.[18]

Local governments fearing suits stemming from "outsourced" community service may want to consider having the defendant sign an acknowledgment and release of liability. Rest assured, most non-governmental entities have community service workers sign such releases. Certainly, local governments should take adequate precautions when utilizing community service workers. Such precautions, however, should not be taken to the extreme of precluding eligible defendants from performing community service.

In addition to official, qualified, and sovereign immunity.[19] Article 45.049(f) of the Code of Criminal Procedure provides statutory immunity relating specifically to community service discharged in satisfaction of fine or costs:

> A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, justice of the peace, municipal court judge, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with manual labor performed by a defendant under this article if the act or failure to act:
>
> (1) was performed pursuant to court order; and
>
> (2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or

reckless disregard for the safety of others.

Notably, this Article appears to provide broader immunity to municipal governments than county governments. It is also important to emphasize that, for an employee, public official, or governmental subdivision to utilize such immunity, the community service must be performed pursuant to a court order.

Conclusion

Rather than viewing a court ordered community service program as a lightening rod of potential legal liability, local governments are encouraged to harness the power of community service to improve their towns and cities.

In Texas, once a local trial court judge has deemed a defendant to be indigent, community service is more than merely an option, it is the law. Accordingly, local governments are encouraged to make community service work for the benefit of the community.

Regardless if it is in the form of an in-house program or if defendants are outsourced to eligible community service providers, all judges, legal advisors, and other public officials must consider how their local governments will comply with the law in light of the Code of Criminal Procedure and *Tate v. Short.*

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[1] *Tate v. Short*, 401 U.S. 395 (1971). Reversing *Ex parte Tate*, 445 S.W.2d 210 (1969).

[2] For a more complete discussion of *Tate v. Short* and its impact on changes to Texas law, see Ryan Kellus Turner, "Pay or Lay: *Tate v. Short* Revisited" *Municipal Court Recorder*, Vol. 12, No. 3 (March 2003).

[3] *Id.*

[4] While such "pay or lay" orders are illegal in light of *Tate*, a survey conducted by TMCEC during FY 03 revealed from a sample of 514 judges that 24% had previously made such orders and that 35% knew of judges who continued to issue such orders. Such defendants who are placed in jail are expressly provided *habeas corpus* relief. See, Article 45.048, Code of Criminal Procedure.

[5] Article 45.049(a), Code of Criminal Procedure.

[6] Article 45.049(c), Code of Criminal Procedure.

[7] The amount of revenue collected by municipal courts grew 97.8 percent over the last ten fiscal years (from $249,799,816 in FY 1994 to $494,194,876 in FY 2003). *Annual Report of the Texas Judicial System, Fiscal Year 2003*, Office of Court Administration, Austin, Texas.

[8] Article 45.049(c). Typically, references to "nonprofit organizations" are associated with 501(c)(3) and (c)(4) non-profit corporations. What constitutes a nonprofit organization or a governmental entity can potentially be the source of debate. Judges must look at the purpose of the organization in light of Article 45.049. In recent, years some courts have denied community service opportunities hosted by churches out of deference to the separation between church and state. Other courts have opted to not allow defendants (predominantly juveniles) to perform community service through schools because the school itself (in contrast to a school district) is not a governmental entity.

[9] Ideally, the community service provider after being informed of the legal requirements should agree in writing to supervise and report back at the conclusion of the community service.

[10] Article 45.049(d).

[11] Judges may give more credit than the $50, which is the minimal amount of credit allowed for an eight-hour period. The amount of $50 was reduced from $100 during the 78th Legislature in an effort to equalize community service credit with jail credit. Courts should remember that the $50 amount only applies to offenses occurring on or after January 1, 2004.

[12] Article 45.049(a).

[13] Filing false information with a court is a Class A misdemeanor punishable by up to one year in jail and a maximum fine of $4000. Section 37.10, Penal Code.

[14] The actual savings to the city is $450,000. The annual cost of operating the program is $117,000.

[15] "The Sugar Land Community Garden fills a void in community service programs in the City of Sugar Land and Fort Bend County. Instead of paying municipal citations for Class C misdemeanor offenses, some juveniles are assigned to work in the garden located in the city's public works complex. The garden makes it possible for juveniles who appear in court with misdemeanor offenses to personally bear responsibility for their actions. Over 550 youths have done community service at the garden, weeding, planting, watering, harvesting, and repairing fences. Local businesses have backed the garden as well by donating tools, seeds, plants, water sprinklers, and more. The garden has produced 2,047 pounds of produce, which is then donated to the Fort Bend Human Needs Ministry for distribution to needy families. The community garden is a win-win from all perspectives." *Texas Town & City,* Vol. LXXXX No. 11 December 2003 at 23.

[16] See generally, George Kelling and Catherine Coles, *Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities*, New York, N.Y.: Simon & Schuster (1996).

[17] For a more detailed discussion, see Jo Dale Bearden, "Keys to Successful Community Service Programs" *Municipal Court Recorder*, Vol. 10, No. 3 (May 2001).

[18] Effective January 1, 2004, Section 133.002(2) of the Tax Code states that "indigent" means an individual who earns not more than 125 percent of the income standard established by applicable federal poverty guidelines.

[19] For a detailed discussion of immunity in the context of municipal government, see David Brooks, 22 *Municipal Law and Practice*, Sections 2.04-2.05 (West 2d. ed. 1999).

Community Service Provider Acknowledgment/Agreement (Art. 45.049(c), C.C.P.)

CAUSE NUMBER: _____

STATE OF TEXAS	**§**	**IN THE MUNICIPAL COURT**
VS.	**§**	**CITY OF _____**
_____	**§**	**_____COUNTY, TEXAS**

Dear Sir or Madam:

The Defendant in the above styled cause has been ordered to perform _____ hours of community service:

- ☐ in satisfaction of fine and costs.
- ☐ by order of the Court.
- ☐ by order of the Court and as required pursuant to State law.

Community service may only be performed for either a governmental entity or a nonprofit organization that provides service to the general public and enhances social welfare and the general well-being of the community.

An eligible entity or organization that agrees to accept a defendant to perform community service MUST AGREE TO:

1. SUPERVISE the Defendant in the performance of the work; and
2. REPORT on the Defendant's work to the Court that ordered the community service.

The following is the Court's contact information:

_____

_____

_____

_____

Please complete, detach, and return the following information and keep the preceding information for your records.

By signing below, I ACKNOWLEDGE the preceding information, ATTEST that my entity or organization is an eligible community service provider, and AGREE to the enumerated terms set forth above.

Printed name of eligible entity or organization: _____

Printed name of entity or organization representative: _____

Signature of entity or organization representative: _____

Date: _____

WARNING: Filing false information with the Court is a Class A misdemeanor punishable by up to one year in jail and a maximum fine up to $4,000.

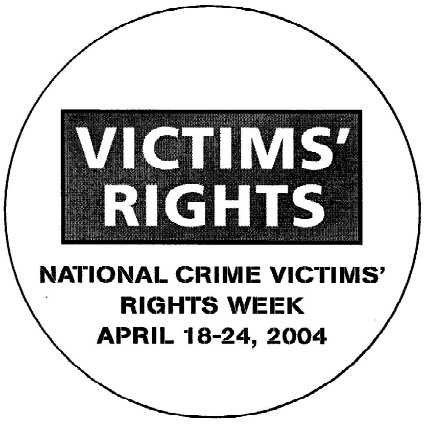
RESOURCES FOR YOUR COURT

Crime Victims' Week

The Office for Victims of Crime (OVC) has announced the availability of the *2004 National Crime Victims' Rights Week (NCVRW) Resource Guide* and poster. These resources were designed to help you generate victim and public awareness during National Crime Victims' Rights Week, set for April 18-24, 2004. This year's theme is "Victims' Rights: America's Values."

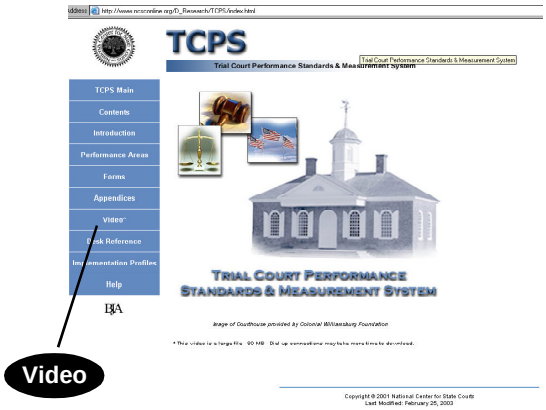
The *2004 Resource Guide* includes many new features. For the first time, all the camera-ready art is available on a CD to simplify replication. A DVD of the introductory theme video is provided for use in victim and public awareness events. You will also find two new documents that describe OVC's rich history and commemorate the 20th anniversary of the Crime Victims' Fund. The *2004 Resource Guide* is filled with great theme-oriented ideas and strategies that will allow you to join thousands of other victim assistance and allied organizations in commemorating the *2004 National Crime Victims' Rights Week*.

Both the *2004 NCVRW Poster* (LT000487) and the *2004 Resource Guide* (NCJ 202045) are now available from the OVC Resource Center (OVCRC). Please contact OVCRC at 800/851-3420 (TTY 877/712-9279) to place your order. For immediate access to the *Resource Guide*, visit the OVC website at www.ojp.usdoj.gov/ovc/ncvrw/welcome.html to view the files online. If you would like to be added to the mailing list to receive future NCVRW Resource Guides and posters, please call the OVC Resource Center.



Municipal Books Information Service

The Texas Municipal League (TML), in partnership with BookPeople, provides a unique, cities-related book information service. Access the TML home page on the Internet at www.tml.org. Click on the BookPeople icon in the upper right corner of the TML home page. In this special section, you can browse for and order cities-related publications. TML plans to continually build upon this special web area to offer a thoughtful blend of classic and current works relevant to the daily governance and operations of cities. Send reading suggestions to book@tml.org, including the title, author, publisher, and ISBN number (if you have it).



Court Performance Standards

The article on page 17 of this newsletter by Greg Toomey of the Downtown Austin Community Court refers to court performance standards. The National Center for State Courts (NCSC) has developed model performance standards that may be downloaded online at www.ncsconline.org/D_Research/TCPS/Introduction.htm. Access the NCSC budget help page at www.ncsconline.org/D_Comm/BudgetPage.htm. NCSC also offers an informative video on performance that may be viewed online at www.ncsconline.org/D_Reserach/TCPS/index.html.

Court Budget Planning during Lean Times

By Greg Toomey, Court Administrator, Downtown Austin Community Court

Sometimes even the best manager is like the little boy with the big dog, waiting to see where the big dog wants to go so he can take him there.

--Lee Iacocca, former Chrysler CEO

Dog day afternoons are currently the dismal rule during court budgetary planning. The current overall diminished budget pool has resulted from a slowly recovering economy occurring at the same time that public safety spending priorities have understandably been increasing. These circumstances tug at the coequal government branch status of the courts in many jurisdictions. It is important for the courts to ensure the fiscal strain on the leash does not preclude meeting judicial obligations.

Interbranch control issues predictably become more acute during tight economic times. The judicial branch often is viewed as subservient to the Legislature or local funding unit's power of the purse and the executive branch's control over the budget. The prevailing notions among many in those arenas are that courts must compete with other units of government for the scarce resources, and that it is the funding unit's job to protect citizens against unnecessary agency expenditures.

Many in the judicial branch, however, believe that the power of court-ordered funding supersedes legislative powers over the purse when insufficient funding jeopardizes the discharge of judicial branch obligations.

These contrary views frequently create a tension that is difficult to reconcile and that operates to cloud shared governmental obligations. The branches of government need to view themselves as equally responsible partners, seeking to achieve an effective allocation of finite resources.

Court managers are frequently the most visible advocates for proposed court budgets. They come to the table representing the collaborative funding position of the presiding or chief judge and the panel of judicial officers. This consensus budget draft then becomes the basis of a justification and budgetary marketing effort. It is at this juncture that the abilities of the court manager become crucial. The manager is the consensus builder among funding unit members. Witness a live cliché: Those who can go along and get along serve their court faithfully and well.

Historically, court budgets have been largely inflexible, with about 85 percent of their budget share dedicated to required expenditures. Over the last 10-15 years, however, required statutory and mandated operational expenditures are estimated to have increased to approximately 95 percent of the federal, state, and local courts' budget share.[1] The current fiscal environment has strained necessary operational funding amounts as well as developmental funding.

During better economic times, courts at times were the beneficiaries of grant funding that supported pilot projects in diverse focus areas. At present, however, funding for innovative projects is becoming much more difficult to acquire. Federal grant dollars for these projects have been notably reduced. Currently, the majority of judicial branch grant funding is for renewal projects that are on a declining resource allocation schedule for a fixed number of years. As an example: The *State Justice Institute,* a federally funded court grantor organization, may be cycling out of existence by the end of the current or next fiscal year cycle.

During December 2003, the U.S. House passed an *Omnibus* spending bill (H.R. 2673) for *FY 2004,* impacting 14 entities. Justice programs were one of the organizational areas included in the bill. Funding for each of the entities had failed as individual spending bills. The Senate will consider this bill during January 2004. The bill provides for rescission of some previously authorized funding for *FY 2003*. Among other cuts, this spending bill decreased funding in the amount of $21.6 million from the Office of Justice Programs (OJP) accounts for *FY 2004*. Increasingly, judicial branch innovations are occurring on the periphery, if they are happening at all.

The prior availability of alternative funding sources lessened demands for developmental funding from *General Funds*. Unfortunately, this former bountiful funding environment helped diminish expectations among state and local funding unit members that *General Funds* would in the future have to become a critical funding component for vanguard projects. From the understandably flinching perspective of the funding unit members, it can fairly be said that the universally shrinking amount of *General Fund* dollars impedes both innovative and baseline funding for all agencies.

During budget planning, it is not necessary for courts to forsake all alternative funding possibilities, however. While the potential grant tilling acreage has ruefully shrunk to

garden size, it does still exist. Funding opportunities are reported regularly in the *Federal Register*. A developing pattern has been the willingness of private foundations to fund partnerships of public sector, faith-based, and nonprofit organizations that are pursuing nontraditional adjudicative and therapeutic jurisprudence goals. *The Chronicle of Philanthropy* is an excellent source for these collaborative possibilities (www.philanthropy.com). There are a number of private publishing services reporting on funding opportunities for the criminal justice system. Consistent with court goals, grant research can still be an effective planning tool for the budgetary planning process.

Exigent circumstances seem to always trump theoretical conjecture. The most easily identifiable needs of the present budgetary cycle combined with those most likely to emerge during planning for the upcoming three cycles form a baseline budgetary statement for the court that can be supported by an advocacy effort carefully crafted to be politically acceptable, performance-based, demonstrable (or otherwise fatally flawed), and fiercely competitive. Our management team begins each new budget cycle by internalizing the notion that Custer had a better chance of escaping in Montana than we do of maneuvering the proposed budget through the approval process unscathed. This promotes a mindset open to compromise. A valid assumption in tight economic times is that there is a heightened demand for strict accountability in all court service and performance contexts.

Such an assumption only emphasizes that the relationship between customer service and court budget is significant. If the court customers believe they are getting the *right* treatment, this perception is inevitably communicated to the funding unit members. It becomes apparent that the allocated court budget is underwriting service and value for the citizens. Working on superior customer service every day bolsters budget share.

In addition to meeting customer service expectations, we always try to match revenue estimates to realistically anticipated income expectations. Case dispositions are always another meaningful performance indicator, the more so if cases are increasing and the increase can be addressed with existing human capital and technology resources. This is an economy of scale demonstration that resonates well with the funding unit.

Circumspect budget planning involves a trifecta that budgets for performance, provides precise accountability through objective measurement, and is tied to clear performance standards. During tight economic times, scrap and build is well received. New initiatives are matched whenever possible to savings produced by the discontinuation of the least effective activities or programs.

Engaging prudent, explainable, and goal-oriented business management practices for budgeting constitutes the most critical contribution court managers can make during these difficult financial times, and can also enable the three governmental branches to avoid an adversarial invocation of the Constitution.

[1] Statistics and premise from Michigan Judicial Institute monograph, *A Changing Environment: Implications for Courts and Courts' Acquisition and Management of Resources, 1999, 2002,* John K. Hudzik, Ph.D.

Article orally reported at a City of Austin Department Director's Meeting and submitted 01/04 to the *Municipal Court Recorder,* Texas Municipal Courts Education Center, Austin, Texas.

Justice Achievement Award: Congratulations Jim!

The National Association of Court Management (NACM) established the Justice Achievement Award in 1988 to recognize outstanding achievement and meritorious projects that enhance the administration of justice. The 2003 winner is the *Financial Management Counseling Pilot Project*, submitted by the Office of Court Administration (OCA) and developed by Jim Lehman of OCA in cooperation with the Dallas County Criminal Courts Collections Department. The project targeted offenders with high debt-to-income ratios for whom the addition of fines, fees, and costs to their debt load would likely cause them to default on their personal financial obligations, court-ordered fines, fees, and costs, or both. Financial counseling was offered to participating offenders and a large percentage of program participants were able to fully meet their court-ordered obligations. TMCEC joins NACM in recognizing the outstanding leadership of Jim Lehman and the Office of Court Administration in the area of fine collection.

See also on page 2 the notice of an upcoming conference offered by the Government Collectors Association of Texas in which Mr. Lehman will be a featured speaker.

FROM THE CENTER

Special Topic Seminar: Magistrate Duties

TMCEC is offering a special seminar on *Magistrate Duties*. This program is designed for municipal judges who, in addition to the their judicial duties, perform magistrate functions on a regular basis.

Seminar Site and Dates:
Austin
June 15-16, 2004 (T-W)
Hyatt Regency Austin
208 Barton Springs Road, Austin 78704
512/477-1234

Topics tentatively scheduled for address include:

- An Overview of Magistrate Duties
- Search and Arrest Warrants
- Probable Cause
- Presentation before the Magistrate
- Setting Bail
- Magistrates Orders for Emergency Protection
- Examining Trials
- Property Hearings
- Emergency Mental Commitments
- Federal and State Case Law Update
- Attorney General Opinion Update
- Ethics

Please register by May 21, 2004. In contrast to the traditional 12-hour conferences that expose judges to a variety of subjects and presenters, the Special Topic Seminar will have fewer presenters and will concentrate on exploring different facets of this single subject matter. Presentations will be longer in length, subjects will be explored in greater depth, and there will be greater opportunity for audience interaction.

NOTE: To attend this Special Topic Seminar, a judge must have attended either a TMCEC 32-hour or 12-hour program during the last academic year (FY 2002-2003). Enrollment will be on a first-come, first-served basis and is limited to the first 70 qualified judges. This seminar fulfills the mandatory judicial education requirement for municipal judges. Judges who have already attended a regional 12-hour TMCEC program may attend this program at their own expense.

Municipal Court Clerk Certification FAQs & Answers

What began as a concept in 1995 has now blossomed into a well-respected professional development program. The number of certified municipal clerks clearly reflects the enthusiasm and hard work of municipal court clerks in Texas:

- 541 Level I Certified Court Clerks,
- 148 Level II Certified Court Clerks, and
- 11 Certified Municipal Court Clerks (Level III).

Where do I start?

The best place to start is by getting your hands on a Level I Study Guide,[1] then read and work through the questions. The exam questions are taken from the Study Guide. The Study Guide may be purchased from TMCEC or downloaded from the TMCEC website: www.tmcec.com/clerkcr1.htm.

Once you are comfortable with the material, register to attend a pre-conference course ($15). The game-styled courses are offered before each of the 12-Hour Regional Clerk Conferences and are a good gauge for readiness.[2] Lastly, take the exam.

What is the format of the exam?

All three levels of the exams are multiple-choice and true/false.

What do I need to do to take the exam?

Once you feel ready to take the exam, complete a registration form[3] and send it to TMCEC with a check made out to TCCA in the amount of $50 for TCCA members or $75 for non-TCCA members for Levels I and II. For Level III, the cost is $25 a part or $50 for the complete exam (three parts total). The exams are scheduled from 1–5 p.m.

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CLERK'S CORNER

Administrative Adjudication of Parking and Stopping Offenses

By Margaret Robbins, Program Director, TMCEC

Clerks reading this article might wonder why administrative parking is being addressed in the "Clerk's Corner." This issue is presented here because the clerk is usually involved in researching issues and changes that the city wants to make to court processing, and changing parking to civil makes a big difference in processing. Discussed in this article is the statute governing administrative parking, along with information from the City of Austin's ordinance, which will show the municipal clerk's role in processing administrative parking.

Chapter 682 of the Transportation Code provides rules that allow municipalities to declare by ordinance parking and stopping offenses to be civil offenses. However, only municipalities that have a population greater than 30,000 may adopt such an ordinance.

When parking is declared civil, an administrative hearing is conducted. This hearing is not conducted by the municipal judge but by a hearing officer, who has authority to impose civil fines, costs, and fees, to administer oaths, and to issue orders compelling the attendance of witnesses and the production of documents. The orders to compel attendance of witnesses or to produce documents are enforced by the municipal court.

A person receiving a parking citation has the right to an instanter hearing, meaning that the person may have a hearing immediately. When a person appears and a hearing officer determines the person is liable for the parking or stopping violation, the officer must issue an order for the amount of the fine, costs, or fees assessed against the person. If a person fails to appear at the hearing, the person is considered to have admitted liability for the offense charged and is automatically assessed a fine, costs, or fees. The registered owner is presumed to be the person who parked or stopped the vehicle.

The enforcement for a civil offense is different from a criminal offense. If an offender does not pay, the city may have his or her vehicle:

- impounded if the offender has committed three or more parking or stopping offenses within a calendar year; or
- booted, which is a device that prevents movement of the vehicle.

Furthermore, a city's ordinance may allow an additional fine to be imposed; deny issuance of or revoke a parking or an operating permit; and may permit the city to file an action to collect the fine and costs.

Section 682.011, T.C., provides that an offender who has been determined to be in violation of the parking ordinance may appeal. The statute provides that the offender must present a petition to the clerk of the court and pay the costs not later than the 30th day after the date of the order of the fine and costs to be paid.

Although Chapter 682, T.C., provides authority and rules for administratively handling parking, it does not provide specifics about how civil parking is managed. These issues are ordinarily addressed by a city's ordinance. The City of Austin's ordinance might be used as an example.

The clerk of the Austin Municipal Court is responsible for implementing and enforcing the ordinance and for appointing hearing officers. The form of the parking citation is prescribed by the clerk, who is required to include statutory requirements. The clerk sets the hours that hearings are conducted. A person who answers a parking citation may pay in person, by mail, or by other method of payment as determined by the clerk. The fines and civil costs are provided for in the ordinance and range from $15 to $150.

A person may request a reset of a hearing. The request must be filed with the clerk at least three days before the hearing date. If the person wants a second reset, the person must post a bond equal to the total amount of the civil fine, costs, and fees. If a person does not receive a response to a request for reset, the request is considered denied and the person must appear as scheduled.

After a hearing officer issues an order, the clerk must file the order in a separate index or file and may record the order by using computer printouts, microfilm, microfiche, or electronic or data processing techniques.

The Austin ordinance makes provisions for the city manager to enter into an agreement with government agencies to provide jurors or other individuals whose presence is required in a judicial proceeding the use of metered parking spaces or time-restricted zones. If the agreement provides for dismissal of the parking citation or a reduced fine, a hearing officer or the clerk shall dismiss the citation or reduce the fine. The

ordinance also provides criteria for dismissal or reduced fine.

The Austin ordinance provides criteria for immobilizing or impounding a vehicle. A hearing officer determines if a vehicle is subject to impoundment or immobilization. After the hearing officer issues a written notice of a hearing, the notice is sent regular mail to an address on the vehicle registration or to a more current address as determined by the clerk. A request for a hearing must be submitted in writing to the clerk not later than the 20th day after the date that the notice was sent.

If a hearing officer issues an order of impoundment or immobilization, the order must be filed with the city clerk (city secretary) or the city clerk's designee who may be the clerk of the municipal court.

The ordinance provides that it is a Class C misdemeanor for a person to interfere, obstruct, prevent, or hinder a person impounding or immobilizing a vehicle. In addition, it is a Class C misdemeanor if a person tampers, defaces, damages, or attempts to remove an immobilization device installed on a vehicle. These offenses are criminal and filed in the municipal court.

A clerk, police officer, city marshal, or parking enforcement officer of the city designates which employee is responsible under an order of immobilization or impoundment to immobilize or to seize a vehicle. After an order has been executed, the return is delivered to the clerk.

Austin's ordinance provides procedures for an appeal. The appeal is initiated by filing a petition with the clerk along with a non-refundable filing fee not later than 30 calendar days after an order requiring payment of a fine and costs is filed with the municipal court. When the clerk receives the petition, the clerk schedules a hearing and notifies all parties of the hearing. This hearing is conducted by the municipal court.

Rebecca Stark, Clerk of the Austin Municipal Court, reports that in their last fiscal year (Oct. 1, 2002 to Sept. 30, 2003), 155,000 parking citations were filed. Out of the 155,000 cases filed, the hearing officers conducted 4,170 hearings for persons contesting their citations. Out of the 4,170 cases, 60 cases were appealed to the municipal court. In addition, 3,504 boot and tow cases were filed. These cases are comprised of the first three parking citations that remain unpaid. A $25 fee is added on top of the fine and costs ordered paid when a boot and tow case is filed. Furthermore, of the 3,504 boot and tow cases, only nine persons requested a hearing. A total of 3,387 boot and tow cases were disposed. The boot and tow hearing is conducted by a hearing officer. At the end of the year, the Austin court shows 137,250 parking cases disposed. This number includes cases filed from previous years.

As can be seen from the Austin statistics, it may be easier to process and handle parking administratively instead of as a criminal offense. This article does not address all issues regarding administrative parking. Clerks can see, however, that the process is vastly different than handling parking as a criminal offense and how important it is that clerks be involved in the process when a city is making a decision about how to best handle parking citations.

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following each 12-hour TMCEC Clerks Regional Conference and the 12-Hour TMCEC Court Administrators Conference.

What is the continuing education requirement and what do I do to keep my certification?

Effective September 1, 2003, Level I and Level II certified court clerks MUST attend 12 hours of continuing education each academic year (September-August) and CMCC, Level III certified court clerks, MUST attend 20 hours of continuing education each academic year (September-August). In addition, a Certification Renewal Application for each level[4] must be completed and submitted with proof of training to TMCEC, attention Jo Dale Bearden.

Once your Certification Renewal Application has been approved, TCCA will send new certified certificates. The new certificates include seals for all the organizations involved and a watermark of Old Main (a building on the Texas State University-San Marcos campus).

More Questions? Contact Jo Dale Bearden at 800/252-3718 or bearden@tmcec.com.

The certification program is a cooperative effort of the Texas Court Clerks Association, Texas Municipal Courts Association, Texas State University-San Marcos, and TMCEC.

[1] If preparing for the Level I or Level II exam, you must reference the Level I or Level II Supplement. The Supplements discuss the recent legislative changes.

[2] For a registration form and a list of dates and locations please see our 2003-2004 Academic Schedule or visit our website at www.tmcec.com.

[3] For a registration form and a list of dates and locations please see our 2003-2004 Academic Schedule or visit our website at www.tmcec.com.

[4] For a *Certification Renewal Application* visit our website at www.tmcec.com/reg_app.html.

COLLECTIONS CORNER

Collections Tool: The Telephone

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

Last month's article on amnesty and warrant roundups generated some interest in several municipal courts and hopefully offered some ideas or considerations for the future. This month, our focus and discussion moves to a collections tool that is inexpensive, efficient, and one which we all possess but is often overlooked ... the telephone.

So, why the telephone? Besides being accessible and available to each of us, other advantages of using the telephone are: it allows immediate contact with the defendant; it is an opportunity to affect a collections transaction; it is normally a low cost item; it is quick to use; and the defendant is aware he/she has been personally located.

There are several reasons why a case may become delinquent. These reasons may be grouped into four categories:

1) **Circumstantial**—These defendants are unable to pay their fines, fees, and court costs due to life issues, such as loss of job, natural disaster, sickness, or personal injury;

2) **Emotional**—These defendants usually live above their means and income. I want it – "I deserve it on my terms" mentality;

3) **Intellectual**—These defendants usually have the means to pay, but aren't good with finances or in keeping records. They may have no understanding of their financial situation; and

4) **Criminal intent**—These defendants use fraud and deceit…never intending to pay. "Come and get me." The good news is this group usually represents only about five percent of the court's total caseload.

You may have heard these lines used by defendants while on the telephone. Try and place these phrases into one of the four categories listed above.

- "I don't have a job," or "I just got laid off."
- "Hopefully, I can make a payment next month."
- "I sent the payment in already; must be lost in the mail."
- "I will pay when I feel like it."
- "He/she is not at home," or "He/she doesn't live here anymore."
- "I have already paid that," or "I have mailed in the proof of payment, proof of insurance, or required paperwork."
- "The person is deceased."
- "Hey, I can't pay the whole thing. I need the money for other needs. Something is better than nothing, isn't it?"

One thing to consider when a defendant is giving you a reason for not paying his/her fines, fees, and court costs is whether the defendant is giving you a stall or an objection. It is important to determine the "true" reason for default or non-payment by the defendant. A **stall** is when a defendant offers an excuse. A stall is not the REAL reason why the defendant isn't paying or fulfilling the obligation. An **objection** deals directly with the payment issue and the reason WHY the defendant will not pay. It can also be a dispute of an item of fact.

When making telephone collection calls to defendants, one can follow the steps outlined below. These steps have proven to be a successful method to effectuate collections and are taught and supported by OCA, Governmental Collectors Association of Texas, and American Collectors Association.

STEP 1 – Getting Ready to Call

Being prepared and informed before you call is critical. Before you make your call, be sure to review the following items:

- the total amount the defendant owes the court;
- the number of cases that the defendant has pending;
- how many of the defendant's cases are in warrant status; and
- the date the current citation was filed and description of the offense.

Also, check for any previous contacts with the defendant, case notes, and outcomes. Have you personally dealt with this defendant in the past? Also, be prepared to discuss the options available to the defendant, and/or the latest date you will accept payment from the defendant.

STEP 2 – Making the Collections Call

Follow the eight-step telephone collections process.

1. **Identify the defendant** (or) the person you are speaking with and his or her relationship to the defendant. Also, smile during your greeting (yes, you can hear a smile through the phone).

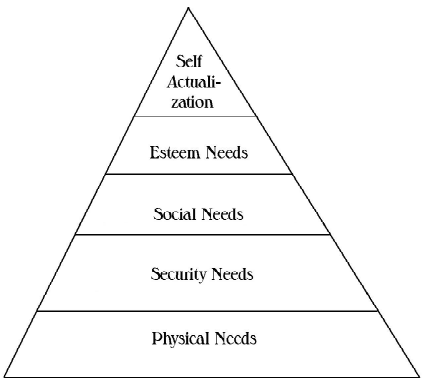
2. **Identify yourself** and the reason for your call. However, if you are speaking to someone other than the defendant, the purpose of the call should not be communicated, and leave your name and telephone number for a return call from the defendant. Also, you should never mention "warrant for your arrest" or leave warrant information on an answering machine message.

3. **Request immediate payment in full**. Most missed opportunities exist because of the failure to request that the defendant pay the case in full. If you take credit card payments over the telephone, you may offer to handle the case immediately while the defendant is on the telephone.

4. **After the payment in full request is made…PAUSE**. Wait for a response from the defendant to your request. There may be up to 10 seconds of silence while the defendant is thinking about your request and his/her response. If the defendant responds with anything other than paying in full immediately or a promise to pay in full, you will need to advance to the next step.

5. **Define the issue.** Define the issue by closely examining the reasons why the balance hasn't been paid (remembering stalls and objections). Applying the Maslow Model at this step may define what motivation technique will work best with the defendant. The Maslow Model has five levels. Dr. Abraham H. Maslow stated that each individual has needs that must be met, and that each person falls into one of the following levels: physical, security, social, esteem, and self-fulfillment. An individual at the physical level is at the basic level, "I can't pay this. My rent is due." A person at the security level might be concerned about how this will affect his/her credit or security, "How is this going to affect my credit or credit rating?" At the social level, individuals are concerned about prestige, "Who else knows about this?" A person at the esteem level may be much too busy to be concerned about a traffic citation, "How dare you call me about a bill." The self-fulfillment level normally involves an important individual, busy, or wealthy defendant, "I can't concern myself with this." This will determine how you proceed with the collection call, and it is up to you to determine the issue or problem. You must also control the telephone conversation. How you control the telephone call is by **asking questions**. When you have defined the issue or problem, you can move on to the next step—the solution.

6. **Develop the solution.** The solution may actually be developed by the defendant alone; however, in most cases, negotiation between you and the defendant will be used. Negotiation is a process where you work with the defendant to resolve the problem. When negotiating you should: maintain the lead and control in the conversation; gain insight from the defendant; show an interest in the defendant while on the phone; be organized and focused on the issue—as the defendant will attempt to use stalls and objections (see above) to get you off track; use specifics in your statements; speak in simple terms; and be clear, positive, friendly, and calm. Never use critical or offensive words, and remember to use THE PAUSE—recognize the value of silence.



Hierarchy of Needs Diagram

Once you know the reason why a case hasn't been paid, you must convince the defendant it is in his or her best interest to pay and resolve the matter. The type of appeal for payment used (*i.e.*, an appeal to the defendant's honesty, pride, or anxiety) will be based on where the defendant fits on Maslow's hierarchy level of needs. An appeal to the defendant's honesty works on all five levels; an appeal to the defendant's pride works best with someone on the top three levels (social, esteem, and self-fulfillment); and an appeal to the defendant's anxiety, which is the threat of arrest by warrant or turning a case over to a secondary collector, works best for a defendant on the two lowest levels (physical and security).

7. **Close the deal.** Believe it or not, some collection calls fail because the caller assumes the defendant knows what to do next. You should not make any assumptions and should only end the call after you have addressed the following items to close the deal. First, get an agreement from the defendant on a payment method and the DATE the payment can be expected. Give

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COURT SECURITY

Prisoner Transportation

By Ron White, President, Texas Marshal Association

As I began preparing to write this article, I couldn't help but reflect back to the beginning of my career. Like a lot of you, I started my career as a corrections officer for a large county jail. It was during this time that I gained much of the knowledge I have now about transporting prisoners. During my career, I have had the opportunity to transport a wide variety of prisoners with convictions from Class C misdemeanors to capital offenses. The skills and knowledge I obtained then have stayed with me throughout my law enforcement career.

As marshals, warrant officers, and bailiffs, prisoner transportation is a daily part of our jobs. It is such a routine part of our jobs that we often become complacent. Anytime you perform a task on a regular basis, you begin to develop certain habits. It is very important that you develop good habits; as the old adage goes, "Bad habits are hard to break." Many of us view transporting prisoners as a lesser risk than other aspects of our duties. The reality is that transporting can be a very dangerous part of our job if we become careless in our daily routine.

There are three basic reasons that we should all be concerned with performing safe prisoner transports. The first reason that comes to all our minds is officer safety. It has been instilled in our minds since the first day of the Police Academy that our number one goal is to go home at the end of the day. My observations have been that we take every precaution when we are out serving warrants, however, once we have the prisoner in the car, we tend to relax and let our guard down. The second reason is the public's safety. None of us would want to be responsible for a prisoner escaping from our custody and, ultimately, causing injury or death to an innocent bystander. The third reason that we need to be concerned with safe prisoner transports is the prisoner's welfare. Once we take custody of that individual, we are solely responsible for his or her well-being. I am sure that none of us would deliberately mistreat or abuse someone in our custody. However, we need to ensure that we are not negligent either.

In our world today, almost every action that you and I take and every decision we make as officers must begin with the question, "Will this get me or my agency sued?" It is unfortunate that it has come to this, however, we must be very conscious of this fact. Lawsuits are costly to your agency and can be costly to you personally. One poor decision can end a successful career. While this hardly seems fair, it is the reality of the job we do. With all of this in mind, I am sure you are asking yourself, "How can we prevent these lawsuits, reduce our liability, and still perform our duties?" I believe that the answer is a fairly simple one. While we cannot prevent every lawsuit, I believe that we can prevent many of them by developing and implementing sound policies and procedures. Policies and procedures are necessary in order to establish guidelines for safe and secure transports of prisoners, as well as insuring the safety of the officer and the general public. These policies must conform to state, local, and federal laws and ordinances. These policies must also provide for the protection of the prisoners' civil rights as well. These policies should be reviewed and approved by the attorney that represents your agency. Once these policies are in place, they must be followed.

With all of these things in mind, I would like to talk about the actual process of transporting prisoners. The prisoner transport begins when a pick-up notice or order for a prisoner transfer is received. Normally, some type of paperwork is required to move a prisoner from one place to another. This paperwork could be anything from the warrant and arraignment paperwork and internal transfer orders to extradition paperwork when transporting from out-of-state. You should ensure that all your paperwork is in order before you leave. It is also important to learn as much information as you can about the individual that you will be transporting. Many times, a telephone call will work. The questions I typically ask concern medications and illness. I also want to know if the prisoner is an escape risk or has a history of assault on peace officers. A criminal history will reveal some of these issues. Remember that you may be transporting them on a Class C misdemeanor, but they may have been jailed or convicted of far more serious crimes in the past.

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the defendant specific information on payment options, mailing directions, and addresses, and have the defendant repeat those instructions back to you. Second, confirm with the defendant the importance of fulfilling the arrangement and agreement made. Explain the responsibilities and consequences in full to the defendant. If you promise to do something for the defendant, always keep your promise!

8. **Update the file(s).** Upon termination of the call, thank the defendant for his/her prompt attention and payment, if applicable. Then update the defendant's case file(s) with dates, notes, and statements made by the defendant regarding the conversation. This will make any follow up easier. Furthermore, if someone works the case(s) after you, he/she will know exactly what is going on with the case(s).

STEP 3 – Monitor Your Effectiveness

Track your success rate with telephone contacts. You should find increased compliance with court orders and a resulting increase in revenues. Telephone contacts used in conjunction with notices have proven to be a highly effective means of collection by many courts in Texas.

STEP 4 – When Do I Start?

Start today. Even if you start only placing calls two hours per week, you will make an impact. You may later discover that you need a 20 or 40-hour staff person to make calls for your court in the future. Set some goals and have fun! The Office of Court Administration (OCA) is available to assist you by providing a collections presentation, an evaluation of your current court's collections process, and by offering suggestions or recommendations to improve your efforts. The best news is this can be provided to your court at no cost. Contact one of OCA's collections specialists at the phone numbers listed below. Best wishes!

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

Jim Lehman 512/936-0991
OCA-Collections Specialist

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

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Once you have all this information and your necessary paperwork, it is time to check your vehicle. Some departments require you to prep your car at the beginning of each shift. A thorough check of your vehicle can avoid potential problems later on. It is always embarrassing to run out of fuel, however, it is even more embarrassing with a prisoner in the car. Not to mention the potential for other problems that it creates. The area where the prisoner will be riding needs to be checked for contraband and weapons before and after each transfer. It is also important to make sure you have the proper restraints that are necessary for the transport. This is also a good time to check the condition of the restraints.

While transporting prisoners, you must stay in contact with your dispatch or communications center. It is very important for someone to know what route you will be taking in case something goes wrong. Once you pick up your prisoner, advise dispatch of your beginning and ending mileage and avoid stopping anywhere along the route. It is never appropriate to go through a fast food drive-through with a prisoner in your vehicle. In addition, making a traffic stop with a prisoner in the car is also a bad idea; protect the welfare of your prisoner.

When you arrive at your destination to pick up your prisoner, you should once again ensure that you receive all the proper paperwork. Positively identify the prisoner that you are picking up. Do not depend on jail personnel or jail identification without pictures and prints. Mistakes can and do occur, especially in your facilities. If the prisoner has any personal property, take possession of it. Never allow the prisoner access to his or her property while in transport. Also, prevent the prisoner from making telephone calls prior to transporting. Occasionally, this is out of your control. The idea is to prevent an escape plan from being set into motion that would possibly lead to an ambush-type situation.

A proper search of the prisoner should be performed before leaving the facility. The prisoner's body and his or her clothing should be searched thoroughly. I have heard officers make statements to the effect that they didn't need to search prisoners being picked up from a jail or correctional facility. The fact is that prisoners from these types of facilities should be checked very closely. Prisoners in a confinement setting can be very creative in making weapons from things you and I never thought of. They are also very clever at concealing paper clips, handcuff keys, and other items that can be used to defeat handcuffs and other restraints. The next time you are at a correctional facility, ask to see all the weapons and contraband that has been confiscated. They usually have a display for training purposes. Some of the most common places to conceal keys and paper clips are inside seams, waistbands, collars, and cuffs. In addition, check the prisoner's mouth

and hair. These are also common places to conceal objects.

After you are satisfied that you have thoroughly searched the prisoner's body and clothes, it is now time to place the prisoner in restraints. A prisoner should never be placed in your vehicle and transported unrestrained. There should not be any exceptions to this policy. Even the most docile and petite prisoner can quickly become violent and uncontrollable. This is never good when you are driving down a busy roadway. The type of restraint used may vary depending on the circumstances. Transporting a prisoner a short distance may only require handcuffs. However, if you are transporting a long distance, you may want to consider using a waist chain in order to handcuff the prisoner in front safely. Handcuffing prisoners behind their back over long distances may cause injury, such as to the shoulder or wrist and could even cause difficulty breathing in extreme cases. If the prisoner is an escape risk or violent, you will want to use leg irons to secure the legs. A short piece of chain connected between the leg irons and handcuffs restricts the prisoner's ability to fight and kick.

Transporting and handling prisoners in court may require special equipment. Some judges will not allow prisoners to be restrained during a trial due to the concern of an appearance of guilt to the jury. In these cases, an alternate means may be used. A leg brace will work; it can be concealed under clothes and allows the leg to be locked into one position. Shock belts are also being utilized in some courts. This device is also worn under the clothing. The shock belt is a remotely controlled device that can be activated by the officer. Should a prisoner become violent or try to escape, the device is activated and delivers a high voltage shock, which disables the prisoner. There is some controversy surrounding the use of this.

Whether we are transporting Class C misdemeanors or convicted felons, we should always take the time to plan the transport and take all the precautions necessary to ensure officer safety and the safety and well-being of the public. Although it is not our responsibility to provide first class accommodations to prisoners, we are obligated to ensure their safety and security. If we keep these things in mind as we go about our daily jobs, we will reduce liability and ensure the safety of everyone.

TMCEC FY04 Academic Calendar

Dates	*School*	*Hotel/City*	*Address & Telephone*
3/24-25/04	12-Hour Regional Judges/Clerks **Clerks Wait List**	Sofitel **Houston**	425 N. Sam Houston Pkwy 77060 281/445-9000
3/30-31/04	Fines & Fees Collections	The San Luis Resort **Galveston**	5222 Seawall Boulevard 78040 409/744-1500
4/7-8/04	12-Hour Regional Judges/Clerks	Ambassador Hotel **Amarillo**	3100 I-40 West 79102 806/358-6161
5/4-5/04	12-Hour Prosecutors	Radisson Resort **South Padre Island**	500 Padre Blvd. 78597 956/761-6511
5/6-7/04	12-Hour Clerks	Radisson Resort **South Padre Island**	500 Padre Blvd. 78597 956/761-6511
5/10-11/04	12-Hour Attorney Judges **Wait List**	Radisson Resort **South Padre Island**	500 Padre Blvd. 78597 956/761-6511
5/12-13/04	12-Hour Non-Attorney Judges **Wait List**	Radisson Resort **South Padre Island**	500 Padre Blvd. 78597 956/761-6511
6/15-16/04	Special Topics Judges (*Magistrate*)/ Court Administrators	Hyatt Regency **Austin**	208 Barton Springs 78704 512/477-1234
6/24-25/04	Bailiffs and Warrant Officers	Inn of the Hills **Kerrville**	1001 Junction Highway 78028 830/895-5000
7/6-7/04	12-Hour Regional Judges/Clerks	Camino Real **El Paso**	101 S. El Paso Street 79901 915/534-3000
7/19-23/04	32-Hour New Judges/Clerks	Lakeway Inn **Austin**	101 Lakeway Drive 78734 512/261-6600
7/30-8/1/04	Level III Clerk Certification Assessment Clinic	Doubletree **Dallas** Campbell Centre	8250 North Central Exprsway 75206 214/691-8700

TMCEC 2003-2004 REGISTRATION FORM

Program Attending: _____ Program Dates: _____
[city]

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

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

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

Last Name: _____ First Name: _____ MI: _____

Names also known by: _____ Male/Female: _____

Position held: _____

Date Appointed/Elected/Hired: _____ Years Experience: _____

Emergency Contact: _____

HOUSING INFORMATION

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

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

Date arriving: _____ ❒ Smoker ❒ Non-Smoker

COURT MAILING ADDRESS

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

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

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

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

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

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

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

_____ _____
Participant Signature **Date**

Pre-Conference Prior to TMCEC Regional 12-Hour Conferences

TMCEC is pleased to announce a special pre-conference on *Bond Forfeitures* before many of the regional 12-hour conferences. The workshop-format class is held from 1-5 p.m. the **day before** the 12-hour conferences (not offered in South Padre). Dates and locations are listed below. Local prosecutors may also attend. Judges and court support personnel from the local area may attend the pre-conference class even if they are not attending the 12-hour program.

Please register for the pre-conference on the registration form on page 27 of this newsletter. THERE IS NO REGISTRATION FEE.

Date of Pre-Conference	*Program*	*Hotel*	*Hotel Address*
3/23/04	12-Hour Regional Judges/Clerks	Sofitel **Houston**	425 N. Sam Houston Pkwy 77060 281/445-9000
4/6/04	12-Hour Regional Judges/Clerks	Ambassador Hotel **Amarillo**	3100 I-40 West 79102 806/358-6161
6/14/04	Special Topics Judges (*Magistrate*) /Court Administrators	Hyatt Regency **Austin**	208 Barton Springs 78704 512/477-1234
7/5/04	12-Hour Regional Judges/Clerks	Camino Real **El Paso**	101 S. El Paso Street 79901 915/534-3000

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

TMCEC MISSION STATEMENT

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

Change Service Requested