Municipal Court Recorder

Volume 12 MAY 2003 No. 4

Waiver of Right to Appeal in Local Trial Courts of Limited Jurisdiction

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

A basic general tenet of American criminal jurisprudence is that defendants have one appeal as a matter of right. The scope of the right to appeal, however, is subject to a host of limits, exceptions, and refinements. Under Texas law, except in capital murder cases, a defendant "may waive any rights secured him by law."[1] While a substantial body of case law pertaining to the waiver of the right to appeal exists, none specifically addresses waiver in municipal and justice courts (local trial courts of limited jurisdiction). As a result, the crux of this article is admittedly in part speculative and presumptive. Nevertheless, from the perspective of municipal prosecutors and judges, it is worth inquiry as to what is known about the subject (and more importantly, what we don't know).

Who Cares and Why?

If you wonder why the subject of waiver of appeal is germane, let alone worthy of an entire article, allow me to sum it up in one word … frustration. The source of frustration stems from the manner and motivation in which a number of appeals from non-record municipal courts arise. Such appeals, for the purposes of illustration, can be described as either a leapfrog appeal or a default appeal.

Leapfrog Appeals

A growing number of defendants in non-record local trial courts (especially those represented by counsel) are aware of the fact that they may plead guilty and subsequently appeal their conviction to the county-level court after perfecting bond in a timely manner (in effect, leaping right over the municipal or justice court). The underlying strategy in such an appeal may have little to do with the actual innocence of the defendant and more

Waiver continued on page 7

Mediation Referrals and Orders from Municipal Courts

By Joan Kennerly, Attorney at Law, Irving

I have been a prosecutor in several municipal courts in Texas and, like all good lawyers and prosecutors, I always strive to seek justice. I found as I represented the State that no matter what the verdict was, in some cases, nobody won and neither justice nor equity was served. I kept thinking there must be better ways for prosecutors and municipal courts to serve the citizens. There are some. Mediation is one of them. It is relatively low cost to the cities and the parties. It works much faster than either the criminal justice system or the civil justice system. More than 95 percent of the time mediation results in an outcome that is, at the very least, acceptable to all parties. This article sets out the law enabling and placing a responsibility on municipal courts to refer and, in some cases, order people under

Mediation continued on page 9

INSIDE THIS ISSUE

Articles:

Counting Time 24
Future of Court Security 23
Mediation Referrals and Orders from Municipal Courts 1
Overview of Collections Programs 19
Role of the Prosecutor 3
Waiver of Right to Appeal in Local Trial Courts of Limited Jurisdiction 1

Columns:

Around the State 2
From the Center 15
From the General Counsel 3
Insights into Diversity 33
Resources for Your Court 13
Tech Corner 34

Texas Municipal Courts Education Center

1609 Shoal Creek Boulevard, Suite 302
Austin, Texas 78701
512/320-8274 or 800/252-3718
Fax: 512/435-6118
Web site: www.tmcec.com

Published by the Texas Municipal Courts Education Center through a grant from the Texas Court of Criminal Appeals. Subscriptions are free to all municipal judges, clerks, prosecutors, andsupport personnel employed by the municipal court. Annual subscriptions may be purchased for $50.

AROUND THE STATE

Changes to Certification

The Texas Court Clerks Association voted in February to make several changes to the Municipal Court Clerk Certification Program. The changes shown below went into effect April 1, 2003.

Membership Requirement

Non-TCCA members may now participate in the Municipal Court Clerk Certification Program. Participants are no longer required to provide proof of TCCA membership in order to test or to apply for certification.

Cost of Testing

The exam fee for Level I and Level II exams for TCCA members has not changed -- $50 with proof of TCCA membership (copy of TCCA card). For non-TCCA members, the Level I and Level II exam fee is $75. The cost of the Level III exam is the same for TCCA members and non-TCCA members -- $50 for the complete exam and $25 per part of the exam.

Continuing Education

For those who are *Certified Municipal Court Clerks,* Level III certified, the continuing education requirement has been changed to 20 hours of education each year. The educational requirements can be met through approved providers: TMCEC, TMCA, and TCCA (local chapters and annual conferences).

Please contact Jo Dale Bearden at 800/252-3718 or bearden@tmcec.com or Pennie Jack at 817/459-6954 or jackp@ci.arlington.tx.us if you have questions or comments.

2002 Ethics Annual Report

Municipal judges have done it again! The *2002 Annual Report* of the State Commission on Judicial Conduct again reports that although there are more municipal judges in Texas than any other type of judge, municipal judges have the lowest rate of complaints filed before the Commission. Only seven percent of the complaints filed in FY 02 were against municipal judges, yet municipal judges compose 37 percent of the judiciary. Congratulations to these fine judges and their staffs. See charts on page 36 of this newsletter for more information.

Free Conference on Alcohol & DWI Cases

Prosecutors and judges from the San Antonio area, watch for information on a free conference on Alcohol and DWI cases coming around August 22 at the Cristus Santa Rosa Training Room in San Antonio. The Presa Community Center will host the seminar. This year's program has been expanded to include municipal courts in recognition of the impact we have prosecuting "gateway" alcohol offenses. Watch the TMCEC *Recorder* for more information.

FROM THE GENERAL COUNSEL

W. Clay Abbott

The Role of the Prosecutor

"In the criminal justice system the people are represented by two -- yet equally important -- groups, the police who investigate crime, and the district attorneys who prosecute offenders. These are their stories. --Theme to "Law and Order" a dramatic NBC television program.

All my best stories come from my days as a prosecutor. Maybe that is why programs like "Law and Order" are so popular. At a memorial service for a long time Lubbock attorney, I sat as numerous colleagues rose to tell stories about the deceased. All of the stories came from the first few years of his career, which he had spent in the prosecutor's office. Later memorial services followed the same theme. Last month, as I solicited input for this article from municipal and county prosecutors, story after story flowed into my e-mail. Low pay and cruddy government furniture seem to be offset by an unparallel real view of the world and the satisfaction of serving the public good.

The Essential Role of the Prosecutor

At any given clerks program -- as I answer questions -- a clerk will declare, "But we don't have a prosecutor." My strong inclination is to reply, "Well, then you really don't have a court do you?" Declaring that you have a functional court without a prosecutor is no less silly than declaring you have a functional court, but have dispensed with the need for defendants. You can't have one without the other. Both are essential as the parties to the cases municipal courts resolve. The role of the prosecutor in municipal courts is not only important; it is essential.

Perhaps a quick look at how we got here will help. Many dispute resolution and criminal control models have been invented during human history. Our adversary system has roots in the concepts of trial by combat. In trial by combat, the winner of a physical contest was the obvious recipient of the good graces of the gods and was therefore right all along. This is a messy way to run a society. The contest turned from violently physical trials to intellectual trials using oration, rhetoric, and law. Needless to say, certain folks became experts. The first Greek lawyers were known as "sophists," or sophisticated liars. This Greek concept found its way to the British Isles and developed into our modern adversary system.

> ***Declaring that you have a functional court without a prosecutor is no less silly than declaring you have a functional court, but have dispensed with the need for defendants. You can't have one without the other.***

In the adversary process, the parties are expected to develop the truth in front of a neutral and factually unencumbered judge or jury. This is done by each side zealously putting forth their position in evidence, oration, and legal argument. This concept of zealous representation and presentation is found in the Texas Rules of Professional Conduct (hereinafter Rules) as well as the Code of Criminal Procedure (C.C.P.). It encompasses the right to confront witnesses (Art. 1.25, C.C.P.), the duty to object (Rule 103, Rules of Evidence), and the right to counsel (Art. 1.051, C.C.P.). Reading the language in Art. 1.05, C.C.P., invokes the imagery of trial by combat:

> "… the right to demand the nature and cause of the accusation against him… . He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself, or counsel or both; shall be confronted with the witnesses against him… ."

This concept of adversarially finding the truth is central to our entire justice system. It is often criticized by those inside and out of the system. It is not flawless, but it is ours and, in my experience, surprisingly, it works.

"In the name and by authority of the State of Texas." Every complaint in municipal court begins with this same phrase. That phrase, required by Article 45.019(a)(2), C.C.P., invokes the authority of the first essential party to a criminal case -- the State of Texas. Article 45.201, C.C.P., makes it clear that the State of Texas, the accusing party in every complaint filed in municipal court, is represented by the city attorney, deputy city attorney, or in some circumstances the county attorney. The judge, definitionally, may not represent a party in a suit he or she presides over. The clerk too must refrain from an adversarial role. Peace officers -- while part of the executive branch -- are witnesses and not attorneys, nor advocates. The role of peace officers as witnesses is comprised in their oath, "To tell the truth, the whole truth, and nothing but the truth."

The Texas Attorney General in Opinion GA-0067 very recently addressed the issue of the prosecutor's role in municipal court. The Attorney General was asked to opine on the need for prosecutors during trial, and whether the judge may simply proceed to question witnesses for the State. In the opinion, the Attorney General makes clear that judges may not call and question prosecution witnesses. In the simplest terms, cases cannot be tried to the bench or to a jury without a prosecutor. To allow such a practice would cast the court as both the prosecutor and the judge. The judge would violate his or her duty to remain fair and impartial. The court with its limitations also makes a substandard advocate. The judge who attempts to play both roles fails splendidly at both.

The opinion tracks the analysis of the TMCEC *Bench Book*, Chapter 8-1 (4th Ed. 2001), indeed the opinion cites it. If the State is not present at trial, the court has three options under Article 45.031, C.C.P. First, the court may postpone the case. Second, the court may appoint an attorney *pro tem* and proceed with that attorney prosecuting the case. Or finally, the court may proceed to trial. If the third alternative is chosen, the judge may not act as the prosecutor, but may -- as the court -- direct a verdict of not guilty for the defendant as required by Art. 45.032, C.C.P., as in all other cases where the State fails to prove a case at trial.

The opinion discusses the right of the court to ask clarifying questions during trial. The Attorney General points out that the trial court's examination of witnesses is frowned on in Texas jurisprudence, even more acutely in jury trials where questions by the court have caused appellate reversal because they have been deemed to be comments on the weight of the evidence influencing the jury's decision.

The opinion makes a compelling statutory and ethical case for the need for prosecutors in municipal court bench and jury trials. The court that fails to heed the clear mandate risks not only reversals, but discipline and potential liability.

Cases cannot be adjudicated without the parties' rights to be heard. Courts cannot enter default judgments against defendants. So too, cases should not be dismissed without the State's right to be heard by judges. There are some limited circumstances where the court may order a dismissal without a motion from the State. Specific statutory authority is given, for example, to the court to dismiss after deferred disposition or DSC. Also, the court may dismiss after presentment of proof of defenses in insurance cases, and remediation in inspection, registration, and expired license cases. The prosecutor is still the best source of fact checking, investigation, and legal interpretation in these cases. No rational prosecutor wants to proceed to a trial he or she cannot win.

In addition to violating the law, when prosecutors are missing or underutilized in municipal court, the viability and function of the court are affected. Officers lose credibility and have an apparent conflict. The judge loses credibility and the prosecution's job of seeking justice goes undone. Many screening, communication, and adversarial tasks are abandoned; justice is not done; the perception of just results is diminished; and the burden on other court personnel is increased.

Unique Role of the Prosecutor

Unlike every other attorney in Anglo-American jurisprudence, prosecutors are free of the basic duty to communicate with and follow the bidding and decision making of a client. The prosecutor represents the sovereign or State but, unlike other legal representatives, the prosecutor also determines what the State needs or wants. The prosecutor is not duty bound to zealously enforce every law in every circumstance, but rather to "do justice" or "see that justice is done." This duty is applied to

Excerpts from the Texas Code of Criminal Procedure

Art. 2.01. Duties of District Attorneys

Each district attorney shall represent the State in all criminal cases in the district courts of his district and in appeals therefrom, except in cases where he has been, before his election, employed adversely. When any criminal proceeding is had before an examining court in his district or before a judge upon habeas corpus, and he is notified of the same, and is at the time within his district, he shall represent the State therein, unless prevented by other official duties. It shall be the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done. They shall not suppress facts or secrete witnesses capable of establishing the innocence of the accused.

Art. 45.201. Municipal Prosecutions

(a) All prosecutions in a municipal court shall be conducted by the city attorney of the municipality or by a deputy city attorney.

(b) The county attorney of the county in which the municipality is situated may, if the county attorney so desires, also represent the state in such prosecutions. In such cases, the county attorney is not entitled to receive any fees or other compensation for those services.

(c) With the consent of the county attorney, appeals from municipal court to a county court, county court at law, or any appellate court may be prosecuted by the city attorney or a deputy city attorney.

(d) It is the primary duty of a municipal prosecutor not to convict, but to see that justice is done.

municipal prosecutors in Article 45.201(d), C.C.P. A more complete description of the prosecutor's duty is found in Article 2.01, C.C.P., that also states, "It shall be the primary duty of prosecuting attorneys… not to convict, but to see that justice is done." That section further distinguishes the adversarial goal of prosecutors by prohibiting suppressing facts or secreting witnesses capable of exonerating defendants. Other attorneys are generally duty bound to keep damaging evidence gained during their representation secret under the rules of attorney/client privilege.

The U.S. Supreme Court has recognized this extraordinary grant of authority. In *Berger v. State,* 295 U.S. 78 (1935), the Court described the role of prosecutors:

> "The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor -- indeed he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

The prosecutor acts as the advocate of the people and as their representative in determining the bounds of both justice and the law. This is clearly a function given great discretion and latitude. The prosecutor may prosecute any offense for which there exists probable cause. The breadth of his or her authority has been recognized in Texas law. In *Lopez v. State*, 928 S.W.2d 528 (Tex.Crim.App. 1986), the Court recognized that the only limitations on the prosecutor's discretion are constitutionally based on a defense showing of vindictive retaliation for the defendant's exercise of his or her rights or a violation of equal protection. There are constitutional limits placed on prosecutors, as well there should be, but the courts have made clear that other government representatives, including trial and appellate courts, must defer to prosecutors' decisions where they do not violate defendants' rights to due process or equal protection.

There is in this publication an excellent article by Joan Kennerly. She outlines the limited circumstances the court may order prosecutors and defendants to mediation. Prosecutors should not overlook this excellent means of "seeing that justice is done." Civilian complainants and defendants could be required to attend mediation prior to the prosecutor's decision to proceed with a case. This could be done before issuing a complaint, or after moving the court to delay the case if a complaint has been filed. The case could be dismissed if the complainant fails to cooperate or an amicable, non-punitive solution is reached. The case could simply proceed if the defendant failed to cooperate or a resolution was not made. This system works great with barking dogs, weeds, other civilian nuisance complaints, and even some compliance officer nuisance cases.

Special Ethical Responsibilities of the Prosecutor

With great power comes great responsibility. The prosecutor must follow rules that apply to all attorneys. Prosecutors use the same care as other attorneys in dealing with jurors, reporting misconduct, soliciting employment, supervising subordinate attorneys and staff, CLE, reporting to the State Bar of Texas, and maintaining competence in his or her areas of practice. There are, however, some areas of particular risk for municipal prosecutors.

Conflict of interest must also be avoided. Representing the city is not the same as representing the State. District and county attorneys representing counties also face this conundrum. The city attorney can certainly represent both but should be cautious in keeping the roles separate. This can become problematic when dealing with *pro se* defendants. Prosecutors must make sure they do not give -- nor appear to give -- legal advice to defendants. Prosecutors should be abundantly clear in revealing their position and responsibilities to *pro se* defendants to avoid incorrect assumptions. Defendants have the right to represent themselves, and to receive the same treatment as defendants represented by counsel. Prosecutors need to use great care in this area and to create procedures to minimize risk. Rule 3.09(c) specifically prohibits prosecutors from initiating or encouraging unrepresented defendants from waiving pretrial, trial, or post-trial rights. This can be accomplished by acting professionally and refraining from overbearing actions or giving advice. Judges can be helpful in clearly explaining defendant's rights and introducing prosecutors during appearances by *pro se* defendants.

Prosecutors must also act with candor toward the court and defendants and their counsel. This duty is increased by the special rules contained in Rule 3.09(d), C.C.P., the U.S. and Texas Constitutions as described in *Brady v, Maryland,* 373 U.S. 83 (1963), and the cases that follow it. The prosecutor has the duty to reveal evidence that tends to exculpate defendants or mitigate their blameworthiness. The prosecutor must not actively hide such

evidence, nor turn a blind eye toward it (*Damian v. State,* 881 S.W.2d 102 (Tex. App.—Houston [1st] 1994)). Failure to abide by this duty can cause reversal of a case, civil liability, and State Bar discipline.

The prosecutor is also specifically limited in what he or she may reveal to the press. Rule 3.07 has specific instructions for prosecutors, and Rule 3.09(e) applies those instructions specifically to prosecutors. In short, the prosecutor must refrain from discussing the facts of a case in the press in order to prevent juror bias.

Finally, although Rule 3.01 prohibits all attorneys from making claims or contentions without merit, prosecutors are prohibited by Rule 3.09(a) from prosecuting or threatening to prosecute cases the prosecutor knows are not supported by probable cause. It is usually the use of threats that causes problems. The Rules still give prosecutors enormous latitude. While prosecutors might be able to try cases they know they cannot win under this rule, the larger duty to do justice would seem to discourage it. There is certainly no implication of unethical conduct in losing a case, but the prosecutor's duty is met equally well by an appropriate dismissal as by a hard fought trial. The admonitions made in *Berger* create a good standard. The prosecutor's duty is only accomplished by striking hard adversarial blows while carefully avoiding foul ones.

The Benefits of Active Prosecutors

The court runs no better without prosecutors than it would without judges or defendants. When a court has no prosecutor, or when they are largely absent, someone must still perform the tasks necessary for the State's representative to perform. Clerks end up inadequately drafting legal complaints. Judges lose their impartiality and take on incompatible roles of decision maker and advocate. Cases fairly and quickly resolved by dismissals proceed to pleas or unnecessary trials. Defendants barred from *ex parte* communications plague clerks with information to which they cannot respond. Cases that could be resolved by fair plea offers must be resolved in slow and cumbersome trials and hearings. Often, defendants simply need to vent or explain. These needs may be met by proper discussions with prosecutors. Defendants feel blocked and subjected to unnecessary procedures. Police do not receive legal advice or legal training. Clerks and judges end up in adversarial positions with police because they are not the proper party to educate or assist them. So many problems that are brought to TMCEC on the 800 line begin with the underutilization of a prosecutor.

So what is a court to do if it has no prosecutor, or if prosecutors cannot or will not fulfill their obligations? It is the municipality's duty to staff the position with an effective advocate. The city's governing body or management needs to be reminded of this obligation. Often, the best attorney for civil representation of the city is not the best choice as the State's advocate in a criminal case. Many good criminal attorneys are available both in and out of traditional firms. It is not uncommon for one law firm or one private practitioner to represent several cities. The court can appoint an attorney *pro tem* when the State is not represented in a case before it under Article 45.031(b), C.C.P. This is hardly a long-term solution. There is hope that the recent AG opinion can be of assistance in communicating the need for active prosecutors to Texas cities. A copy of that opinion may be accessed from the TMCEC web site.

Finally, city attorneys, municipal prosecutors, or attorneys *pro tem* must all step up to the plate and fulfill our duties. Too often, prosecutors let judges and clerks do our jobs. This violates the prosecutors' duty to zealously advocate for their clients. The State of Texas has some of the best advocates I have ever had the pleasure to meet. She deserves no less.

Who Prosecutes?

City Attorney's Office	565	48.2%
County Attorney's Office	30	2.6%
Private Law Firm or Practitioner	392	33.5%
An Attorney *Pro Tem* as Needed	29	2.5%
No Response	155	13.2%

Data from 2001 survey of Texas municipal judges conducted by TMCEC.

Top Ten Advantages of an Active Prosecutor

#10 Can argue the law and teach the law to police officers.
9 Checks for defendants whose complaints need enhancement.
8 Briefs and responds to motions.
7 Deals with defense counsel.
6 Plea-bargaining, can deal with closed cases, multiple charges, waiver of appeal, special conditions of deferred, and other special needs on cases.
5 Can refer civilian complainants and defendants to pre-charging ADR.
4 Can review and update language in complaints.
3 Tries cases so judges can remain impartial.
2 Can provide means for *pro se* defendants to vent, without taking court time or *ex parte* communications.
1 Can dismiss unfair or bad cases without trial.

Waiver continued from page 1

to do with the defendant's hopes that the case may be dismissed or ignored by the county or criminal district attorney. In essence, the defendant in such circumstances is banking on the presumption that the prosecutor's plate is already so full that he or she is either unwilling or unable to engage in prosecutorial triage (*i.e.*, the prosecutor cannot pursue the Class C misdemeanor prosecution because of the never-ending flow of other criminal cases being filed in his or her office).

Because Texas law does not predicate that the defendant's appeal occur subsequent to both trial and finding of guilt, some defendants may attempt to take advantage of the law in hopes of alluding final conviction. Debatably, such strategic attempts fly in the face of the objectives of the Code of Criminal Procedure pertaining to judicial efficiency and prompt justice.[2] Such appeals, while potentially abusive, are nevertheless authorized under law.[3]

Default Appeals

A close cousin to the leapfrog appeal is the default appeal. Such an appeal occurs after the defendant fails to comply with orders to defer proceedings (pursuant to either Articles 45.051, 45.0511, 45.052, 45.053, or 45.054, Code of Criminal Procedure). Subsequent to violation of a term of the deferral, the court either enters a final judgment or proceeds to impose a judgment. In response to the imposition of the fine, some defendants may opt to appeal. In circumstances where a special effort has been made to rehabilitate or show leniency to the defendant, or where a considerable amount of time has been spent adjudicating the case, such an appeal may be perceived as an effort to stonewall in order to avoid accountability. This is especially true, as previously described, when a *trial de novo* is not actively prosecuted in the county-level court.

What Do We Know from Case Law?

In the leading case *Ex parte Dickey*, the Court of Criminal Appeals held that in some circumstances a defendant may lose a right to appeal by explicit waiver and that appellate courts are justified in dismissing such appeals.[4] Under such circumstances, even with an effective waiver, the trial court may subsequently grant the defendant permission to appeal.[5] Such a waiver, however, can only occur if it was made after "trial."[6] This was consistent with the Court's earlier holding in *Ex parte Townsend*, which held that, as a matter of law a waiver of a right to appeal made prior to trial cannot be made knowingly or intelligently and is thus invalid.[7]

But is *Townsend* and its progeny still good law? In *Blanco v. State*, decided in 2000, the Court of Criminal Appeals appears to have essentially abandoned *Townsend*. In *Blanco*, the defendant was convicted by a jury but before sentencing entered into a recommended sentence with the State. In exchange for a recommended sentence, the defendant agreed to waive his right to appeal. After the trial court accepted the State's recommendation, the defendant subsequently attempted to challenge his sentence on appeal. The Court of Criminal Appeals held that, since the defendant was bargaining with the prosecutor for a sentencing recommendation, and since the trial court granted the recommendation by the State, the Court could find no reason that the defendant could not be held to his bargain.[8] Applying *Blanco*, intermediate appellate courts have subsequently upheld pretrial waivers conditioned upon the trial court following the prosecution's sentence recommendation.[9]

Can Defendant's Waive Their Right to Appeal from Non-Record Courts?

While no appellate court has addressed this particular question, *Blanco* seems to underscore that nearly any right, under the right circumstances (including the right to appeal), can be waived. In holding the defendant to his agreement with the State, the Court of Criminal Appeals explained that its decision was intended to advance "valid and important public policy concerns of moving cases through the system with benefits to both defendants and the general public."[10] From such a public policy perspective, it is hard to argue that criminal defendants facing years of imprisonment can effectively waive their right to appeal, while the vast number of "common criminals" facing the imposition of a fine cannot. If moving cases efficiently through the system is indeed beneficial to both defendants and the public, it is hard to imagine how allowing the waiver of the right to appeal in the trial courts that adjudicate the most cases violates such public policy.[11]

Assuming that such a waiver can occur in local trial courts, it would likely have no impact on minimizing leapfrog appeals. On the other hand, however, in instances where the prosecutor recommends a particular fine or some sort of probation, it seems plausible that a defendant could in bargaining with the State stipulate to waive his or her right to appeal in the event of default. Hence, assuming that the county court would acknowledge such a waiver from a non-record court, only default appeals may be waivable.[12]

Considerations for Prosecutors

Only a prosecutor can negotiate a recommended sentence in exchange for the defendant's stipulated waiver of appeal. Alas, underscoring the fundamental necessity of prosecutors

in municipal court, unless the prosecutor is present to negotiate and make such a recommendation, a proper waiver cannot occur.[13] In instances where prosecutors wish to negotiate such a waiver, they are advised to be mindful of their ethical and legal obligations.[14] Especially in instances where the defendant is *pro se*, prosecutors must balance full disclosure while not providing legal advice to the defendant. This, at times, can be difficult.

As previously stated, leapfrog appeals are completely legal. Nonetheless, in instances where appeals by *trial de novo* are not actively prosecuted in the county, the law does provide a potential remedy. Article 45.201(c) of the Code of Criminal Procedure states "with the consent of the county attorney, appeals from municipal court to a county court, county court at law, or any appellate court may be prosecuted by the city attorney or a deputy city attorney."

Considerations for Judges

It must be expressly understood that municipal judges and justices of the peace *should not* and *may not* attempt to unilaterally hinder or oppose a defendant's right to appeal, regardless of the defendant's perceived motives in appealing. Without an initiative by the prosecutor, the judge should not raise the subject of waiver of appeal. Nor should a judge prohibit a defendant from appealing to county court when such an agreement exists. Ultimately, only the county court can decide if such an agreement between the State and the defendant will be honored.

In *Blanco*, the defendant claimed he should be able to renege on his agreement with the State because he otherwise had no recourse in the event that the trial court declined to follow the prosecution's sentencing recommendation. While the Court stated that the facts of the case did not raise such an issue, the Texarkana Court of Appeals suggested that Article 26.13 of the Code of Criminal Procedure provides safeguard for defendants.[15] Article 26.13 contains the statutory admonishments that a judge must give to a defendant upon a plea of guilty and when a plea-bargain with the State exists. Historically, such admonishments have only been required in felony cases.[16] Nevertheless, the Austin Court of Appeals has held that a defendant does not waive his or her right to appeal where it appears that payment of a fine is not voluntary but rather the product of duress.[17]

Thus, an argument can be made that local trial court judges *should* admonish the defendant pursuant to Article 26.13 in order to ascertain that the recommended sentence is not the product of duress and to ensure that the defendant understands fully the consequences of his or her failure to comply with their agreement with the State.

Conclusion

While many questions regarding waiver of appeals in local trial courts remain unanswered, *Blanco* could prove pivotal in shedding some light on the subject. At a minimum, *Blanco* is important for at least two reasons. First, it underscores the sheer necessity of prosecutorial involvement in negotiating the defendant's waiver of appeal. (Equally important, it highlights and underscores the necessity for judges to remain uninvolved in such matters). Secondly, it substantiates the notion that prosecutors in local trial courts may be able to recommend a specific

Appeals

It has recently come to the Center's attention that many courts, including the county courts, were not aware that Article 45.11, C.C.P., was repealed in September 1999. That statute required county courts to send fine money imposed upon conviction of a municipal court appeal from a non-record municipal court back to the municipal court. Because the 76th Legislature did not replace the statute, it meant that the county court that took jurisdiction over the appeal gets to keep the fine imposed on the conviction of the appealed case.

The good news is that there are counties that are trying Class C misdemeanor convictions appealed from municipal court. YEA!

The bad news is that most of those counties have been sending the fines collected on those cases back to the municipal court. Since September 1999, the county court was not required to do so, and the city had no authority to keep the money. Hence, cities must return to the county money that belongs to the county. OUCH! This is not good news in this time of budget crunch but, without any authority to keep the money, the city has no choice.

fine, deferred disposition, or other form of probation in exchange for the defendant's waiver of appeal. Ultimately, however, it is the responsibility of the court to ensure that defendants know the implications of entering into such agreement.

[1] Article 1.14(a), Code of Criminal Procedure.
[2] See generally, Article 1.03, Code of Criminal Procedure.
[3] Generally, a criminal defendant cannot appeal punishment after a plea of guilty or *nolo contendere* when the sentence recommended by the prosecutor is not exceed by that imposed by the court (Article 44.02, Code of Criminal Procedure). The general rule does not apply to justice courts and most municipal courts. Article 44.17 of the Code of Criminal Procedure provides that in all appeals to a county court from justice courts and municipal courts other than municipal courts of record, the trial shall be *de novo* in the trial in the county court, the same as if the prosecution had originally commenced in that court.
[4] 543 S.W.2d 99, 104 (Tex.Crim.App.1976) overruled on other grounds by *Ex Parte Hogan*, 556 S.W.2d 352 (Tex.Crim.App. 1977).
[5] *Id.* at 100.
[6] *Id.* at 101. "Trial," in this context, includes a guilty plea proceeding or a contested trial, after both conviction and sentencing. George E. Dix and Robert O. Dawson, 43A *Criminal Practice and Procedure*, Section 43.17 (Texas Practice 2d ed. 2001).
[7] 538 S.W. 419, 420 (Tex.Crim.App.1975).
[8] *Blanco v. State*, 18 S.W.3d 218 at 220 (Tex.Crim.App.2000).
[9] See, *e.g.*, *Lacy v. State*, 56 S.W.3d 287, 288 (Tex.App-Houston [1st Dist.] 2001, no pet.; *Williams v. State*, 37 S.W.3d 137, 139-140 (Tex.App.-San Antonio 2001, pet ref'd); and, *Littlejohn v. State*, 33 S.W.3d 41, 44 (Tex.App.-Texarakana 2000, pet ref'd).
[10] *Blanco*, note 8 at 220.
[11] Municipal and justice courts collectively adjudicated 9,565,647 criminal cases during FY 2002. *Annual Report of the Texas Judicial System*, Fiscal Year 2002, Office of Court Administration, Austin, Texas.
[12] While Article 44.17 of the Code of Criminal Procedure describes the manner in which the appeal proceedings in the county court should be conducted (*i.e.*, trial *de novo*), statutory law is silent as to whether the county court can hold the defendant to his or her bargain as in the case of *Blanco*.
[13] Simply stated, a judge is not a substitute for a prosecutor in municipal court. See generally, *Tex. A.G. Op GA-0067* (2003).
[14] "It is the primary duty of a municipal prosecutor not to convict, but to see that justice is done." Article 45.201, Code of Criminal Procedure.
[15] *Blanco*, 18 S.W.3d at 220.
[16] In a misdemeanor case, a guilty plea may be accepted without a showing that it was freely, understandingly, and voluntarily entered into. *Craven v. State*, 613 S.W.2d 488, 489 (Tex.Crim.App.1981) overruled on other grounds by *Jeffers v. State*, 646 S.W.2d 185 (Tex.Crim.App. 1981)..
[17] *Hogan v. Turland* 430 S.W.2d 720 (Civ.App.1968, no writ).

Mediation continued from page 1

their jurisdictions to mediation. It will discuss the procedures and safeguards built into the law and hopefully will persuade you to give this form of alternative dispute resolution (ADR) a fair trial.

On May 14, 1987 the Texas Legislature adopted *The Alternative Dispute Resolution Act* as Title 7 of the Texas Civil Practices and Remedies Code. While other courts across the state have ordered alternative dispute resolution extensively and routinely, municipal courts as a whole have been slow to use this valuable tool. Title 7 clearly applies to municipal courts.

Title 7 provides, in pertinent part:

Title 7. Alternative Methods of Dispute Resolution

. . .

Chapter 154. Alternative Dispute Resolution Procedures

Subchapter A. General Provisions

Section 154.001. Definitions

(1) "Court" includes an appellate court, district court, constitutional county court, statutory county court, family law court, probate court, *municipal court*, or justice of the peace court. [Emphasis added.]

. . .

Section 154.002. Policy

It is the policy of this state to encourage the peaceable resolution of disputes, with special consideration given to disputes involving the parent-child relationship, including the mediation of issues involving conservatorship, possession, and support of children, and the early settlement of pending litigation through voluntary settlement procedures.

Section 154.003. Responsibility of Courts and Court Administrators

It is the responsibility of all trial and appellate courts and their court administrators to carry out the policy under Section 154.002.

There is no question that this act applies to municipal courts. It enables them to refer parties to mediation and other forms of alternative dispute resolution and further makes it the responsibility of the courts and their administrators to carry out the clearly stated Texas policy by referring parties to mediation and other forms of ADR.

All municipal judges can refer the parties in cases before them to

mediation on their own motions and on motions from any party before them.

Do note that the parties in a criminal case are the prosecutor, who represents the State, and the defendant. The victim, complainant, police officer, or code compliance officer are just witnesses and have no authority to dismiss or plea bargain a case. Although courts may refer cases to mediation, the court may not order the prosecution to participate in mediation without written consent of the prosecutor.

The Code provides:

Article 26.13(i). Plea of Guilty

Notwithstanding this article, a court shall not order the State or any of its prosecuting attorneys to participate in mediation, dispute resolution, arbitration, or other similar procedures in relation to a criminal prosecution unless upon written consent of the State.

Title 7 further provides in pertinent part:

Subchapter B. Alternative Dispute Resolution Procedures

Section 154.021. Referral of Pending Disputes for Alternative Dispute Resolution Procedure

(a) A court may, on its own motion or the motion of a party, refer a pending dispute for resolution by an alternative dispute resolution procedure including:

. . .

(3) a nonjudicial and informally conducted forum for the voluntary settlement of citizen's disputes through the intervention of an impartial third party, including those alternative dispute resolution procedures described under this subchapter.

. . .

Section 154.023. Mediation

(a) Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them.

. . .

Any municipal judge, lawyer or not, court of record or not, may refer the parties to mediation on the motion of one of the parties or on the court's own motion. Mediation is one of the forms of alternative dispute resolution municipal courts may use to help people who fall under the court's jurisdiction.

The law provides a procedure that judges must use for deciding to refer parties in cases on their dockets to mediation. Title 7 further provides in pertinent part:

Section 154.021. Referral of Pending Disputes for Alternative Dispute Resolution Procedure

. . .

(b) The court shall confer with the parties in the determination of the most appropriate alternative dispute resolution procedure.

Having decided that ADR is appropriate for the parties in a case under the municipal court's jurisdiction on a motion from one of the parties or from the court, the judge must confer with the parties about which form of ADR is most appropriate. After this discussion, if the judge decides mediation is appropriate for the parties and the dispute before the court, the judge may refer the parties to mediation. This discussion and referral may best be made at a pretrial conference where it becomes clear to the court that mediation may be appropriate.

The law provides a procedure parties may use to respond to the municipal judge's decision to refer them to mediation. If a party follows the procedure, the judge may reconsider his or her decision. Title 7 further provides in pertinent part:

Section 154.022. Notification and Objection

(a) If a court determines that a pending dispute is appropriate for referral under Section 154.021, the court shall notify the parties of its determination.

(b) Any party may, within 10 days after receiving the notice under Subsection (a), file a written objection to the referral.

(c) If the court finds that there is a reasonable basis for an objection filed under Subsection (b) the court may not refer the dispute under Section 154.021.

If the municipal judge decides to refer the parties to mediation, the judge must notify the parties of that decision. The statute does not require any specific kind of notice so the judge may choose any form. The judge may notify the parties in person if the judge, after conferring with the parties, makes the decision to refer them to mediation while they are in the courtroom for the case that brings them into the court's jurisdiction. The court administrator may send written notice by U.S. mail, return receipt requested, or notify the parties by telephone or e-mail. Other forms of notice are also acceptable. What is important is that: (1) the court notifies all the parties that judge has referred them to mediation, and (2) the court has some way of knowing when each of the parties received notice.

Any party has 10 days from the date of notification to file a written

objection to the judge's referral to mediation. The court must review the objection. If the court finds that there is a reasonable basis for the objection, the court may not refer the parties to mediation. The statute sets no time limit for a judge to make a decision after reconsideration nor one for notifying the parties of the decision. A municipal judge would provide better customer service if he or she would make the decision and notify the parties as soon as possible after one of them files an objection. Disputes that reach any court tend to become harder to resolve the longer the parties wait for intervention.

The Texas Code of Criminal Procedure reinforces the municipal judge's authority to refer parties in cases before them to mediation. Article 26.13(g) provides:

> **Article 26.13. Plea of Guilty**
>
> (g) Before accepting a plea of guilty or a plea of nolo contendere and on the request of a victim of the offense, the court may assist the victim and the defendant in participating in a victim-offender mediation program.

The municipal judge may refer the parties to a victim-offender mediation program at the request of any victim of an offense on the court's docket. The judge may let the victim know that this option exists and ask the victim whether he or she wants to request it.

In addition, the Texas Code of Criminal Procedure in Article 42.12 provides conditions under which the municipal judge may order the parties to mediation if the municipal court is a court of record. It provides in pertinent part:

> **Article 42.12. Community Supervision**
>
> . . .
>
> **Section 2. Definitions**
>
> In this article:
>
> (1) "Court" means a court of record having original criminal jurisdiction.
>
> (2) "Community supervision" means the placement of a defendant by a court under a continuum of programs and sanctions, with conditions imposed by the court for a specified period during which
>
> (A) criminal proceedings are deferred without an adjudication of guilt; . . .
>
> **Section 11. Basic Conditions of Community Supervision**
>
> (a) The judge of the court having jurisdiction of the case shall determine the conditions of community supervision and may, at any time, during the period of community supervision alter or modify the conditions. The judge may impose any reasonable condition that is designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the defendant. Conditions of community supervision may include, but shall not be limited to, the conditions that the defendant shall:
>
> . . .
>
> (16) With the consent of the victim of a misdemeanor offense or of any offense under Title 7 Penal Code offenses against property participate in victim-offender mediation.

All municipal courts have original jurisdiction over fine-only misdemeanor criminal violation cases alleged to have occurred in their respective cities. Judges in municipal courts of record may order the defendant to mediation as a condition of deferred adjudication with consent of the victim. However, the Code of Criminal Procedure limits the authority of municipal judges to refer or order parties to mediation. The Code provides:

> **Article 5.08. Mediation in Family Violence Cases**
>
> Notwithstanding Article 26.13(g) or Section 11(a)(16), Article 42 of this code, in a criminal procedure arising from family violence, as that term is defined by Section 71.004, Family Code, a court shall not refer or order the victim or defendant involved to mediation, dispute resolution, arbitration, or other similar procedures.

A municipal judge may not refer or order the parties to mediation if the case on the court's docket arises from family violence.

A municipal judge might strongly consider referring or ordering parties to mediation because it may save the court's time and serve the citizens better than the criminal justice system does. As a prosecutor, I frequently filed cases that I thought did not really belong in municipal court even though they were valid fine-only criminal cases. That is, they were cases in which I had reason to believe a crime had been committed and that the person accused committed it. Often these were city ordinance cases like encroaching fences, cars parked on the grass, trash and debris in the yard, and dilapidated structures. One or more of the defendant's neighbors or a city inspector might have been able to find evidence of a violation that needed to be abated, however, the verdict, whatever it was, was not likely to solve the real problem underlying the complaint.

Some of these types of offenses include noise (disorderly conduct), assault, reckless damage and destruction, and theft. The people involved in these types of cases include: tenant-landlord, school-

student, neighbor-neighbor, employer-employee, employee-employee, merchant-customer, service provider-customer disputes, and family disputes that do not arise from family violence. These disputes may be resolved in mediation much more satisfactorily for everyone involved than in a municipal court case or in multiple municipal court cases.

Mediation is a process in which two or more parties come to an agreement that is at least acceptable to all of them with the help of a neutral person, the mediator. A mediator can usually help the parties resolve the dispute in a day or less. The mediator uses heightened listening and communication skills, genuine neutrality, creativity, and open-minded problem solving skills to help the parties resolve their dispute. Often, the parties have had a simple but longstanding failure to communicate. Mediation often results in a long-lasting solution.

A mediation starts with the mediator setting the ground rules and announcing his or her expectations for the mediation with all parties present. Each party may then offer a summary of the dispute as he or she sees it. The mediator then meets with each party separately in a series of sessions back and forth until the parties reach an agreement. The mediator may then bring them back to a joint session.

The Texas Civil Practices and Remedies Code provides in pertinent part:

Section 154.053. Standards and Duties of Impartial Third Parties

(a) A person appointed to facilitate an alternative dispute resolution procedure under this subchapter shall encourage and assist the parties in reaching a settlement of their dispute but may not compel or coerce the parties to enter into a settlement agreement.

(b) Unless expressly authorized by the disclosing party, the impartial third party may not disclose to either party information given in confidence by the other and shall at all times maintain confidentiality with respect to communications relating to the subject matter of the dispute.

(c) Unless the parties agree otherwise, all matters, including the conduct and demeanor of the parties and their counsel during the settlement process, are confidential and may never be disclosed to anyone, including the appointing court.

. . .

Everything the parties say to the mediator and to one another in a mediation is privileged and confidential. The parties usually each give the mediator permission to tell the other party some of the contents of the separate sessions and give the mediator questions to ask the other party. But nothing that occurs in joint or separate sessions may be disclosed to anyone without the parties' permission. Mediators generally shred their notes after the parties reach an agreement to prevent them from being discovered.

After referring or ordering parties to mediation, a municipal judge knows whether the mediation was successful when he or she never sees the parties in municipal court again in any case arising from the mediated dispute. While the parties may not thank the judge for referring or ordering them to mediation, word will surely get to the council that the smart judge found a way to amicably resolve the citizens' dispute.

The Alternative Dispute Resolution Act gives municipal judges the authority and imposes a responsibility on them and their court administrators to refer parties to mediation or another form of ADR. The Code of Criminal Procedure gives judges in municipal courts of record authority to order a defendant and the victim to mediation with the consent of the victim. The Code of Criminal Procedure also prohibits judges from referring or ordering parties to mediation if the case on the docket arises from domestic violence. Mediation is a process by which one or more parties may reach a solution that is at least acceptable to each of them with the help of a neutral third party. Mediation can resolve disputes faster than criminal cases can and can do so at very low cost.

Joan Kennerly is in private practice in the Dallas area and may be reached at jkennerly@yahoo.com. She is a certified mediator. Ms. Kennerly has served as a city attorney in several Texas cities, as a TMCEC faculty member, and authored a set of TMCEC study guides in the mid 1990s.

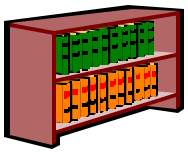
Web Resources on ADR

Ethical Guidelines for Mediators:
www.texasadr.org/ethicalguidelines.cfm

Texas Dispute Resolution Centers:
www.texasadr.org/adrcenters.cfm

Center for Public Policy Dispute Resolution:
www.utexas.edu/law/academics/centers/cppdr/index.html

State Bar of Texas: Alternative Dispute Resolutions:
www.texasadr.org



RESOURCES FOR YOUR COURT

Seat Belt Classes

The Texas Education Agency has announced the first school and classroom locations authorized to present the new Specialized Driving Safety "Seat Belt" classes: www.tea.state.tx.us/drive/activesb.html. Information about the course may be found at www.tea.state.tx.us/drive/spec_ds_crs.html. This course was mandated by House Bill 1739, 77th Texas Legislature, which amended Section 545.412 and Section 545.413 of the Texas Transportation Code. The specialized driving safety course includes four hours of information on child passenger safety seat systems and the wearing of seat belts, the effectiveness of child passenger safety seat systems and seat belts in reducing the harm to children being transported in motor vehicles, and the requirements of the law and the penalty for noncompliance. Related driving safety information is also included in the course, thus making it a six-hour specialized driving safety course that is commonly known as the "Seat Belt" course. If a defendant elects to take a driving safety course, the judge must require that a person complete a six-hour specialized driving safety "Seat Belt" course if she or he has violated the seat belt law or failed to properly secure a child in a child protective seat, booster seat, or seat belt (as applicable).

The seat belt certificate, like the current driving safety certificate, has a State seal and a unique certificate number under the seal, but it differs in several important aspects. The seat belt certificate is tan-colored; the certificate begins with the letter "S"; the certificate's title is "State of Texas Specialized Driving Safety Course for Occupant Protection Uniform Certificate of Completion"; and the certificate has a graphic of an unfastened seat belt in the lower right corner.

Duplicate certificates will be issued by TEA. They will be the same as the original seat belt certificate, except that they will have the word "Duplicate" printed in bold letters across the top.

If you have any questions, please contact Gary Nophsker (gnophske@tea.state.tx.us, 512/997-6511) or Kathy Kenerson (kkenerso@tea.state.tx.us).

Court Security Audit

Worried about court security? A low or no cost security audit of your courthouse can be accomplished internally by using the guidelines and forms in the *Trial Court Performance Standards Implementation Manual* published by the National Center for State Courts: www.ncsconline.org/D_Research/TCPS. Look under Standard 1.2: Safety, Accessibility, and Convenience, "Trial court facilities are safe, accessible, and convenient to use." The specific link is www.ncsconline.org/D_Research/TCPS/Standards/stan_1.2htm. The city marshal or local police might assist with the audit.

2003 Memorial Day *Click It or Ticket* Initiative

Year 2001 Texas data shows seat belt use at 76 percent. That means at least one in four Texans are still not buckling up. Concerned safety advocates and law enforcement officials will again launch a vigorous statewide campaign called *Click It or Ticket Texas*. The result of the first year of *Click It or Ticket* was an increase of seat belt usage to 81.5 percent. This year's goal is for Texas to reach a usage rate of 85 percent.

Click It or Ticket Texas enforcement and awareness campaign will be conducted May 19 to June 1, 2003, with the second mobilization starting November 18 through December 1, 2003. When seat belt use in Texas reaches 85 percent, each year an estimated 241 lives can be saved and 5,275 injuries prevented. Beyond the human toll, rising insurance rates and medical costs are everyone's concern. A nine percent increase in seat belt use in Texas would produce economic savings of $392 million. For additional information, see the website: www.texasclickitorticket.com. Court administrators may want to add additional staff during this campaign to keep up with the increased workload.

JCIT Report

The Spring 2003 Report on the Judicial Committee on Information Technology (JCIT) can be accessed at the JCIT website in either Adobe PDF at www.courts.state.tx.us/jcit/newsletters/spring2003.pdf or HTML format at www.courts.state.tx.us/jcit/newsletters/HTML/Cover.htm. The report outlines the activities of the Committee and contains information on online filing of case disposition statistics to OCA, surplus computers, and software updates.

TMCA Conference

The Texas Municipal Courts Association will offer its *Annual Meeting* on September 18-20, 2003 at the San Luis Resort Spa and Conference Center in Galveston. An interesting educational program is planned, including a legislative update and information on fine and fee collection. To register, contact Judge Robert Richter (TMCA Treasurer), 1350 NASA Road One, Suite 200, Houston, Texas 77058-3165. The registration fee is $95 and the deadline is August 20, 2003. A limited number of rooms are available at the San Luis at $80 single/$90 double. Please contact the hotel directly (800/392-5937) to make a reservation.

TCCA Annual Convention
Holiday Inn Riverwalk
October 5-8, 2003
San Antonio, Texas

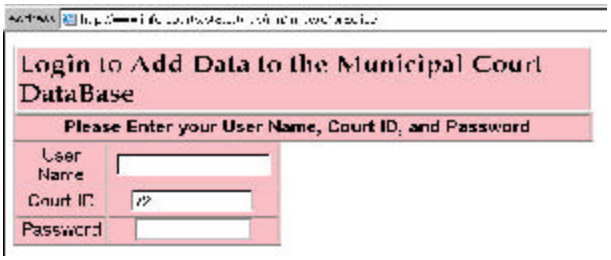
OCA Software

The Office of Court Administration (OCA) has provided free, DOS-based case management software to municipal and justice courts for the past ten years. Although it is a DOS program, it can be run in Windows 3.x or Windows 95. The *Justice of the Peace Courts and Municipal Case Management* software program is designed to meet the day-to-day docketing and case-setting needs of the justice and municipal courts by automating all functions of the court, and tracking each case from the time it enters the judicial system until it is disposed. In addition, the OCA conducts training sessions and offers a help desk in Austin to help court personnel adapt the system to their court. The software is most widely used in the low volume courts.

In recent months, OCA has partnered with the Texas Department of Information Resources (DIR) for the release of a new Windows-based software system to replace the DOS one. OCA and DIR will evaluate vendor proposals and negotiate a statewide contract that will be managed by DIR. OCA plans to support its existing DOS case management system through August 2005. After that date, courts that use the OCA software will need to buy a commercial product or upgrade to the new system and pay any necessary fees.

For additional information about OCA software, contact: 512/463-1642, or send OCA an e-mail at: HelpDesk@courts.state.tx.us.

To preview the OCA online reporting feature, go to: www.info.courts. state.tx.us/jp/jjp.exe/home



More Courts of Record by Ordinance

The last issue of *The Recorder* contained a list of Texas courts of record. Shown below are additional courts that were omitted. We appreciate these courts for calling TMCEC to let us know that they had become a court of record.

Bedford
Forest Hill
Haltom City
Keller
N. Richland Hills
Richland Hills
Watauga

TCCA Scholarships

The Texas Court Clerks Association (TCCA) has started a scholarship program for TCCA members who participate in the certification program. The scholarships may be used to pay the registration fees to attend TCCA or TMCA annual conventions or meetings. For an application and further information, contact:

TCCA Scholarship Committee
c/o Rosie Caballero, Chairperson
130 Town Center Boulevard
Coppell, TX 75019

FROM THE CENTER

Lubbock Legislative Update

TMCEC has added a *Lubbock Legislative Update* to its schedule of summer programs. It will be held on August 13th (Wednesday) at the Lubbock Holiday Inn Hotel & Towers (801 Ave. Q). A limited number of sleeping rooms will be provided at grant expense. Please complete the registration form shown below and send in the $50 registration fee.

Housing at the TMCEC Legislative Updates

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

The Legislative Updates will be held in Houston, Austin, and Lubbock. The registration form below can be used to register. If a hotel reservation is required,

Need housing? Use registration form on page 31.

Texas Municipal Courts Education Center
Legislative Update Registration Form

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

☐ *August 8, 2003*
Austin
Omni Southpark
4140 Governor's Row
Austin, TX 78744
Telephone Number: 512/448-2222
Register By: July 11, 2003

☐ *August 13, 2003*
Lubbock
Holiday Inn Hotel & Towers
801 Avenue Q
Lubbock, TX 79401
Telephone Number: 806/763-1200
Register By: July 11, 2003

Name *(please print legibly)*: _____

Street: City: Zip: _____

Office Telephone #: _____ Court #: FAX: _____

Primary City Served: Other Cities Served: _____

E-mail address: _____

√ the program you would like to attend & return completed form with a $50 registration fee to TMCEC.

Check all that apply: ☐ Attorney ☐ Non-Attorney ☐ Full Time ☐ Part Time

☐ Presiding Judge ☐ Associate/Alternate Judge ☐ Justice of the Peace ☐ Mayor/Judge

☐ Court Clerk ☐ Deputy Clerk ☐ Court Administrator ☐ Bailiff/Warrant Officer

☐ Prosecutor ☐ Other: _____

I certify that I am currently serving as a municipal judge, city prosecutor, defense lawyer practicing in municipal court, or court support personnel in the State of Texas. Payment is received for this program; payment is due with this form. The $50 is refundable if the Center is notified of your intent in writing (two weeks prior to the seminar).

_____

Participant Signature **Date**

use the registration form on page 31. Registration forms should be accompanied by a $50 registration fee made payable to TMCEC.

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

Austin - August 8, 2003 (F)
Omni Southpark
4140 Governor's Row
Austin, TX 78744
Telephone Number: 512/448-2222
Register by: July 11, 2003

Lubbock - August 13, 2003 (W)
Holiday Inn Hotel & Towers
801 Avenue Q
Lubbock, TX 79401
Telephone Number: 806/763-1200
Register by: July 11, 2003

The Legislative Update seminars are not a substitute for the annual judicial education requirement. Judges must still satisfy the 12-hour annual judicial requirement. New, non-attorney judges must still satisfy the 32-hour judicial education requirement. Attendance at the Legislative Update seminar will not be considered full or partial satisfaction of judicial requirements. Attendance does meet requirements for the clerks certification program.

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

Level I Review Video

TMCEC has prepared a review video to assist clerks in studying for the certification exam at Level I of the Municipal Court Clerk Certification Program. The video is a seven-part series featuring TMCEC faculty.

Introduction (4:22)

An Overview of the Courts (30:08)

Authority & Duties (29:25)

Procedures before Trial (26:57)

Trial Processes (37:09)

State & City Reports (36:32)

Juveniles & Minors (29:16)

Copies may be borrowed from TMCEC at no charge or purchased for $10. Call 800/252-3718.

TMCEC Fines and Fees Conference

The keynote speaker at the April 15-16, 2003 conference was Jim Lehman, Collections Specialist for the Research & Court Services Section of the Office of Court Administration, who spoke on *Fine Collections: Changing to a Proactive Approach.* Jim Lehman outlined the importance of using private sector collection techniques in court (*i.e.*, well defined purpose, clear line of responsibility and accountability, significant investment in qualified staffing and strategic planning, and encouragement of creativity). He recommended that courts analyze their collection rates and compare them to the private sector. Dunn & Bradstreet, for example, reports an average collection rate of 85 percent. A survey of Texas courts indicated that, too often, the collection rates in courts is around 61 percent. Lehman emphasized that it is important to change perceptions, attitudes, and priorities in order to have a high collections rate. Lehman noted, "A fine is punishment for a crime only if it is collected." For years, too often the general perception has been that few criminal offenders were financially able to pay fines and costs. Approaching the problem with low expectations has resulted in courts being paid after credit card companies, utilities, and recreational fees. Instead, the court and its personnel should be proactive, meaning take the initiative and act before the defendant defaults instead of waiting to respond. For example, rather than working with false assumptions, ask the defendant, "What can you pay?" and not, "Can you pay $25 a month?"

Lehman said that studies show that the most common reason for non-payment is due to a confused understanding (70 percent). Only 10 percent do not pay deliberately. Lehman says that courts presume that the defendants can't pay; the terms are too flexible; there are unclear instructions; there is weak follow-up, if any; and there are few or no consequences or penalties for late or insufficient payments.

"Everyday a debt/fine remains uncollected, the likelihood it will remain uncollected increases," said Lehman. He noted that typically in the private sector 85 percent can be collected in the first 30 days, but only two percent after 120 days. Courts in Dallas County, Brazoria County, San Patricio County, and Rockport have successfully adopted the approach advocated by Lehman. San Patricio County reported a 53 percent increase in collections in the first year.

Lack of compliance in paying court fines and fees denies a jurisdiction revenue and, more important, calls into question the authority and effectiveness of the court and the justice system.
--National Center for State Courts (1995)

TMCEC hopes to again offer a similar program in FY 04. Until then, it is suggested that judges and court personnel interested in these topics attend the Governmental Collectors

Association (GCAT) regional meetings (www.govcat.net) or contact Jim Lehman or Rene Henry at the Office of Court Administration, Fine and Court Costs Collections Project, 205 W. 14th Street, Suite 600, Austin, Texas 78701, 512/463-1625.

The Governmental Collectors Association of Texas was formed October 28, 1999 and incorporated March 31, 2000. Members consist of professionals from across Texas responsible for the collection of funds for the governmental entities in which they are employed. Individual membership is $150. For additional information, please contact the GCAT President: Nadine Jenkins Director, Montgomery County Collections, 210 W Davis Ste. 330, Conroe, Texas 77301, 936/538-8197 or njenkins@co.montgomery.tx.us.

Audiotapes on Fines & Fees

The TMCEC *Fines & Fees Collection Conference* (April 15-16, 2003) was highly rated by participants. Municipal judges and court support personnel who were unable to attend may order the course materials and audiotapes at no charge (one per court). Use the order form on the right.

TMCEC PROGRAM AUDIOTAPES & COURSE MATERIALS

The following are audiotape recordings from TMCEC's *Fines and Fees Collection Conference*. Duplicates are available through the Center at no charge; one set per court.

___ *Fine Collection: Changing to a Proactive Approach* — Jim Lehman, Collections Specialist, Office of Court Administration

___ *Clashing Paradigms The Courts, Collections and Ethical Considerations* — W. Clay Abbott, General Counsel, TMCEC

___ *Questioned Court Documents* — John Young, Warrant Officer/Document Examiner, Midland

___ *Warrants: Cost-Benefit Analysis of Warrant Collection* — Rene Henry, Collections Project and *Warrants: Overview of Warrants & Disposing of Old Warrants Essentials* — Margaret Robbins, Program Director, TMCEC & Rene Henry, Collections Project Manager, Research & Court Services Section, Office of Court Administration, Austin

___ *Using Technology to Collect & Increase Collections How to Do Electronic Payments with Credit Cards, Telephones, Internet, and Wire Services* — August Skopik, Regional Account Manager, Official Payments Corporation

___ *Bond Forfeitures* — Judge Steve Williamson, Deputy Chief Judge, City of Fort Worth

___ *Collections in a High Performing Court* — Donald McKinley and Rebecca Stark, City of Austin

___ *Juvenile Enforcement Issues* — Ryan Turner, Program Attorney and Deputy Counsel, TMCEC

___ *Indigents & Fine Enforcement: Avoid those Lawsuits!* — W. Clay Abbott, General Counsel, TMCEC

___ *Intergovernmental Relations Working in the City Context* — Kathy DuBose, Assistant City Manager, Fiscal & Municipal Services, City of Denton

___ *Fiscal Management - Don't Lose What You've Collected* — Rene Henry, Collections Project Manager, Research & Court Services Section, Office of Court Administration

___ *Workshop on Designing a Court Collections Plan* — Jim Lehman, Collections Specialist, Office of Court Administration

___ *Credit Bureaus, Skip Tracing, and People Finders* — Brad Alford, Collections Manager, Kerr Collections – Kerr County

___ *Warrant Round-Ups and Amnesty Programs* — Susan Richmond, Consultant, Flower Mound

___ *DPS Programs Non-Violators Compact* — Margaret Robbins, Program Director, TMCEC and *DPS Programs OmniBase & License Suspensions* — Charles Brothers, President, OmniBase Services of Texas

___ *Outsourcing Collections Contracts - What You Need to Know* — Judge Bonnie Goldstein, Municipal Judge, City of Cockrell Hill

___ Printed program materials (in digital CD format); one set per court.

Return order to 1609 Shoal Creek Blvd. #302, Austin, TX 78701; Fax 512/435-6118.

Name: _____

Title: _____

Court: _____

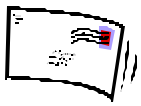
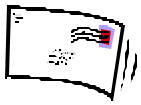
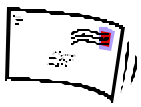
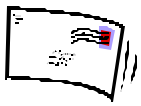
Address: _____

City, State, Zip Code: _____

Telephone Number: _____

E-mail Address: _____

Flowchart for Misdemeanor Collection Process

	Description of Process	Time Frames
 **Sentence is imposed.**		
 **Payment schedule is established.**	The defendant's ability to pay is reviewed immediately after imposition of sentence. Defendant must submit financial application. Application verified.	At time of sentencing.
 **Late notice.**	A notice is generated after 5:00 p.m. on the due date.	Day payment is due.
 **Collection telephone calls.**	When a case remains delinquent for 7 days, the case is assigned to in-house collection.	Telephone activity commences on the 8th day of delinquency.
 **Notice of capias pro fine.**	When a defendant fails to resolve the delinquency, collection efforts are exhausted by a capias pro fine being issued.	A notice of the capias pro fine is mailed one business day after the capias pro fine is issued.
 **Notification of collection agency DPS FTA program.**	Cases with capias pro fine that remain active for 7 days receive notification of collection agency placement.	Capias pro fine remains active.
 **Pre-arrest notification.**	Cases with a capias pro fine receive notification from the city police department/warrant officer.	Capias pro fine remains active until case disposed.
ARREST	Police department actively pursues warrants; multiple jurisdictions participate in warrant round-ups.	Capias pro fine remains active.

An Overview of Collections Programs

by Rene Henry, Collections Project Manager, Office of Court Administration, Austin

Introduction

Court costs, fees, and fines are a significant source of city revenue. Uncollected court costs, fees, and fines are generally not given as much thought and attention as they should. This is especially true when revenues continue to increase year after year. The uncollected amount in a single year is often significant. Over a multi-year period, the amount is often staggering.

To get a feel for the amount of money being left on the table, so to speak, look at the Collection Rate Scenarios Chart shown on the next page. The chart shows amounts collected, amounts not collected, and accounts receivable build-up over a 10-year period for various levels of assessments and collection rates. For example, assume a court assesses $600,000 in court costs, fees, and fines in a single year and assume a collection rate of sixty percent. This means $360,000 was collected. But it also means that $240,000 was not collected. If the same were to hold true for a 10-year period, the total uncollected amount would be $2,400,000. (A 60 percent collection rate is probably a pretty good estimate of the overall statewide collection rate from all levels of courts combined -- *i.e.*, municipal, justice, county-level, and district courts.)

The collections process in many cities consists of inconsistent payment terms and conditions, with follow-up on non-payment being a low priority. Part of this stems from the incorrect assumption that defendants generally do not have the resources to pay. The word spreads quickly in a community as to what a defendant can get by with—whether they really have to pay, how long they really have to pay, and what action the court will take if payment is not made, *etc.* And, local attorneys know the system as well. The result is that defendants often pay as little as they can get away with.

Collection Rate

Just looking at revenues to gauge collections in a municipal court is not enough. Amounts collected may increase, while the collection rate actually goes down. This is because assessments may be continuing to increase.

Part of the problem is that very few courts can tell you what their collection rate is. Even most automated systems fail to show collection rate information. It is impossible to get a handle on collections without knowing what the collection rate is. Amounts collected must be tied to when the assessments were made to provide meaningful collection data.

If you do not know the collection rate for your court and your software cannot be adjusted to compute it, you can always do a sample. A three-month sample should give you a pretty good indication of what your rate is. It will give you the information to estimate how much additional revenue could be generated with a collections program achieving various rates of collection. The sample should cover a period where the defendants have had plenty of time to pay (preferably a year).

A collection rate for a period of time can be determined using the spreadsheet format shown on page 21. To get a true collection rate, all cases with assessments during the sample period will need to be included in the sample, whether a payment is made or not. Notice that the format provides for monitoring how much is paid within various periods of time (*i.e.*, 0-2 days, 3-30 days, 31-60 days, and more than 60 days). The amount of assessments satisfied by credits (*i.e.*, jail time and community service) is also provided for.

The Program

Simple Program Definition

A collections program is simply a private sector, proactive approach to collecting court costs, fees, and fines in criminal cases. Collections has a lot to do with expectations. Expect to get paid sooner and you generally will. A collections program is a focused way of showing a change in expectations. Rather than assume a defendant cannot pay up front, a proactive approach assumes they can unless they show you differently. The truly indigent are not mistreated. For those that cannot pay, community service is an option. In addition, a collections program does not diminish judicial authority. A judge simply assigns collection responsibilities to an office or section of the office specializing in collections, which serves as an arm of the court. A judge always has authority to review collection activities.

Program Components

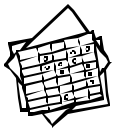
- Broad-based commitment, starting with the judges;
- Simplicity;
- Uniform collection policy; and
- Quality professional staffing.

Collections Process

- Defendants are made aware that they are expected to pay in full upon sentencing;

Collections continued on page 22

Click here to view *Collection Rate Scenarios* chart



Click here to view *Collection Rates* chart

Collections continued from page 19

- Defendants not prepared to pay in full must report to the collections department/section;
- The defendant must complete and submit an application to the collections department/section requesting additional time to pay;
- The application is verified;
- The defendant is interviewed by a collections department/section employee;
- If the defendant qualifies for an extension, the collections department/section recommends to the court strict payment terms (generally 50 percent within 48 hours, 80 percent within 30 days, and the balance in full within 60 days);
- If a defendant fails to qualify for an extension, the collections department/section will attempt to place the defendant in an alternative program (*e.g.*, community service) and return the defendant to the court; and
- The collections department/section actively manages cases, including prompt follow-up on delinquencies, to termination (*i.e.*, by payment in full or non-compliance).

Program Benefits

- Increased revenue from court costs, fees, and fines;
- Increased revenue from interest earnings since more is collected and collected sooner;
- An increase in respect for and confidence in the judicial system;
- Better compliance with court orders;
- Less revenue that has to be raised from the general taxpayer;
- Increased morale of those working in the law enforcement and judicial arenas;
- A reduction in the amount of jail time and community service credits; and
- A reduction in the amount of time judges spend on non-paying cases, time they can use to focus on other judicial issues.

Cities interested in starting a collections program should contact Rene Henry or Jim Lehman at the Office of Court Administration for assistance at P.O. Box 12066, Austin, Texas 78711, 512/463-1625(t).

Excerpt from *OCA Court Financial Handbook*, April 2002. Used with permission. The entire handbook can be accessed online at: www.courts.state.tx.us/publicinfo/cities_cfm_hbk/toc.htm.

Comments on Collections from the General Counsel

As we noted at the collections conference, judges are placed in a difficult position in collections efforts. As noted in the above article, the National Center for State Courts aptly places a burden on the court to prove its effectiveness and authority by collection. Yet, Canon 3B(4) also clearly states that a judge must, "be patient, dignified, and courteous to a litigant… and should require similar conduct of lawyers, staff, court officials, and others subject to the judge's control."

The courts can learn much from private sector collections plans. But, the court cannot engage in the same tactics that have resulted in passage of Fair Debt Collection legislation. The court remains a court. The Fair Debt Collection Act does not apply to fines and court cost collection because they are not a consumer debt. Fines are punishment. They hurt when you have to pay them, which is in fact the general idea. Yet, the court is not a collection agency. Issues of constitutional limitation, civil liberties, due process, and judicial decorum would require that fine collections follow a higher standard than civil debt collection, not a lower one.

In conclusion, our courts must collect fines if our courts are to have meaning or impact. But, to forget we are courts of law that serve the people and not the municipal government, would do equal damage to our viability.

The Future of Court Security

by Jo Dale Bearden, Program Coordinator, TMCEC

Recently, the National Center for State Courts issued their *2002 Report on Trends in the State Court,*[1] which is a document that discusses recent issues and explains how these may be relevant to the courts. One of the chapters deals specifically with court security, *Communication is the Key in Court Security*. This got me thinking; the future of court security is not only with the new technology, but it is also about changing the way we think to more effectively deal with an ever changing society.

The National Center for State Courts discusses the changing of focus for court security personnel. The courts have always been concerned with the details of court security, such as prisoner transfers, weapons screening, and barriers. With the present state of the world, security has become a global issue changing the focus of security to guarding the institution of justice as a whole, not just our day-to-day activities in the court. Learning to balance the needs of the court and focusing on the needs of the citizens is and will become vital. Why? Because security, in general, is at the forefront of everyone's mind.

In the post-September 11th world, all citizens are thinking about how secure a place is, not just those of us who do security. Part of the goal in court security is not only to make those persons in our court safe, but also to make them feel safe. Thus, citizens expect more visible security, things like metal detectors, X-ray machines, and security cameras that are common in many governmental buildings. Why not the court? How do we explain budget restraints, the inability to spend money that has been set aside for court security, or the miscommunication that takes place and impedes the improvement of security in your court to citizens relying on you to keep them safe when they are in court? The all-too-present future is visible security.

But, with budget cuts being rampant, how then do the courts meet the needs of the future? It has been discussed countless times that not all changes have to involve money. Start by sharing resources and ideas with neighboring departments, courts, cities, counties, and all those agencies that are also preparing for the future and securing citizens. Understanding what is going on in your community, region, and across the state can help you arm yourself with resources. Next, constantly update your security plan. (If you don't have a plan, make one.[2]) Ask yourself and your court the following questions:[3]

- Do you have open lines of communication with other individuals in the law enforcement and judicial communities?
- Have you walked through your court and evaluated how secure all the possible entrances are?
- Have you set up procedures to open mail or prevent contamination threats, such as anthrax or other biohazards?
- Have you evaluated the grounds of your courthouse as potential bombing targets? If so, how often do you check these areas?
- Is your staff properly trained in case an emergency happens in your court? If so, how often do you have drills involving your staff?
- Do you have a disaster recovery plan?
- Do you have an evacuation plan?

Review your plan in its entirety and update as required for your court setting. Keep in mind that though you are responsible for security in the court, the other court personnel should be involved with the development and upkeep of a security plan. Allow the court administrator and judge to assist in planning. If they buy into your plan, they are more likely to support and promote the plan. Use a courthouse security survey[4] to determine how safe court personnel feel when they are at work.

What else is in our future? Our world is changing. Technology is changing. People are changing. The future of our courts depends on courthouse security changing as well. We need to stay on top of new information for security, including the weapons of mass destruction, preventing and dealing with terrorism, and protecting the courts from chemical, biological, and radiological attacks. Where do you get this information? The World Wide Web has a plethora of information.[5] Remember, in planning, the future of court security isn't just technology, it is changing minds and perspectives.

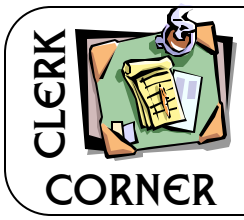
[1] Access at www.ncsconline.org/D_KIS/Trends/Trends02MainPage.html

[2] Following are websites where security checklists can be accessed: www.tmcec.com/files/security.doc and www.ncsconline.org/D_Research/TCPS/Forms.htm - Form 1.2.1.

[3] 2002 Report on Trends in the State Court, *Communication is the Key in Court Security*, access at www.ncsconline.org/D_KIS/Trends/Trends02MainPage.html.

[4] www.ncsconline.org/D_Research/TCPS/Forms.htm - Form 1.2.3.

[5] Visit the U.S. Department of Justice at www.usdoj.gov. Also visit U.S. Federal Emergency Management Agency at www.fema.gov.



Margaret Robbins
TMCEC Program Director

Counting Time

Counting days! Counting months! How do courts determine how to count periods of time? Several statutes apply—some are specific and one is a general statute. The specific statutes are Articles 45.003 and 45.013, Code of Criminal Procedure (C.C.P.); Section 548.605, Transportation Code (T.C.); and Sections 111.0022 and 111.053, Tax Code. The general statute is Section 311.014, Government Code (G.C.).

Specific Statutes

Article 45.003, C.C.P., provides that for counting the 10-day period to remedy an expired driver's license or an expired registration, the court does not include Saturday, Sunday, or a legal holiday. In other words, the court counts just workdays.

Section 548.605, T.C., which allows judges to dismiss an expired inspection certificate when it is remedied within 10 working days, provides that Saturday, Sunday, or a holiday on which county offices are closed is not included in the definition of "working day."

Article 45.013, C.C.P., commonly called the "Mail Box Rule" applies only to procedures from Chapter 45, C.C.P. This statute provides rules for mailing documents to the court. According to Article 45.013, a document is timely filed if it is mailed on or before the due date and is received by the court clerk within 10 days of the due date. "Day" is defined by this statute to not include Saturday, Sunday, or a legal holiday. Hence, the court counts only working days. The postmark on the envelope is "prima facie" evidence of the date that the document was deposited in the mail. "Prima facie evidence" is evidence that is sufficient to establish a given fact.

Section 111.053, Tax Code, is used by the State Comptroller's Office to calculate time for the Comptroller's own tax payment and tax returns. This statute provides that payments and returns are deemed to be paid or filed on a timely basis if they are mailed on or before the due date. They do not have to be received on or prior to the due date. In addition, if the due date falls on a Saturday or Sunday or a public holiday, then the due date will be extended to the next ordinary business day. Section 111.0022, Tax Code, provides that the general provisions of the Tax Code apply to other fees, charges, or other financial transactions that the Comptroller is required to administer. According to Richard Craig, Legal Counsel, State Comptroller, because of Section 111.0022, Section 111.053 controls whether a time payment fee is due on a particular criminal defendant's payment of court costs or fines if the payment is mailed. Hence, the time payment fee required by Section 51.921, G.C., must be paid if the defendant's payment is mailed after the due date, which is the 30th day after the date judgment is entered. Check the postmark to determine if the time payment is due.

General Statute

Section 311.014, G.C., is found in Chapter 311, G.C., which is the codification of the Code Construction Act. The rules in the Code Construction Act are not exclusive, but are meant to describe and clarify common situations in order to guide the preparation and construction of codes. In other words, it is an aid in understanding statutes. The purpose of the Code Construction Act is to help courts to reasonably construe statutes so that the interpretation is consistent with general principles of law.

Section 311.014, G.C., tells courts how to compute time periods. Courts use this statute if there is not a specific statute that applies. Section 311.014 provides that when counting a period of days, the first day is excluded and the last day is included. If the last day of the time period is a Saturday, Sunday, or legal holiday, the period is extended to include the next working day. This means that the court counts calendar days. The court does not count the day that the action occurred, but starts counting the time period starting with the next calendar day.

Section 311.014 provides if computing a number of months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

Examples of Computing Time Periods

Courts have many time periods to calculate -- for example: appearance, driving safety courses, deferred disposition,

new trials, forfeiture of cash bonds, appeals, alcohol awareness courses, and tobacco awareness courses.

In the following examples, the defendants are making a personal appearance. If the defendant files documents by mail, be sure to refer to Article 45.013, C.C.P., for any Chapter 45 procedures.

- In the instance where appearance is required within 10 days of receiving the citation, the court does not count the day that the citation was received but starts the time period by counting the next day even if it is a Saturday, Sunday, or a legal holiday. If the 10th day falls on a weekend or legal holiday, the court goes to the next working day of the court. This is the day that the defendant must appear either to make a plea or request a driving safety course.

Click here to view calendar 

- To determine eligibility for taking a driving safety course, the defendant cannot have taken a driving safety course (DSC) within the preceding 12 months. The court, using the certified copy of the driving record from the Texas Department of Public Safety to determine the day that the defendant completed the driving safety course, starts counting the 12-month time period on the day of the month that the defendant took a prior course. The ending day would be the same numerical day of the 12th month. If there were not that many days in the month, the court computes the ending date as the last day of the 12th month. When counting the 180 days for taking a driver's safety course, the court does not count the day that the court granted the course but starts counting the next day even if it is a Saturday, Sunday, or a legal holiday.

Click here to view calendar 

Click here to view calendar 

- When a court grants deferred disposition for a period of time (cannot exceed 180 days), the court does not count the day the court grants deferred, but starts computing the probation period starting the next day.

Click here to view calendar 

- If a defendant in a non-record municipal court makes a motion for a new trial, the defendant is required to make the motion within one day of the judgment. The defendant must file the motion the next day after judgment. The judge must make a decision on the motion within 10 days after judgment.

Click here to view calendar

- A defendant in a record municipal court has 10 days from the date of judgment to file a motion for new trial. The court does not count the day judgment is entered, but starts counting the time period with the next day and counts calendar days. If the last day of the time period falls on a weekend or holiday, the court extends the time period to the next working day of the court.

Click here to view calendar

- The court uses Section 311.014, G.C., to count days to determine the period of time that a defendant has to file an appeal bond, which is different depending on whether the defendant is in a municipal court of record or municipal court of non-record.

  In non-record municipal courts, the appeal bond is due 10 days after judgment is entered if the defendant appeared in open court. If the defendant appeared by mail, the defendant may mail the bond before the 31st day after receiving a certified notice from the court. The court must receive the bond within 10 working days after the 30th day.

  If the conviction is in a municipal court of record, the defendant has different deadlines to file notice of appeal and then the appeal bond. Since there are several deadlines computed in this process, the March 2003 edition of *The Recorder* is a good source for determining how to compute time for this process.

Click here to view calendar

Click here to view calendar

- If a defendant files a cash bond with the court and includes a statement asking the court to accept a plea of nolo contendere if the defendant fails to appear, the defendant has 10 days from entry of judgment to ask for a new trial. The court does not count the day of the entry of judgment, but starts the next day and counts calendar days.

Click here to view calendar

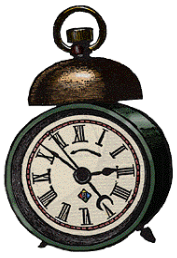
- When a minor is convicted of an Alcoholic Beverage Code offense, the court must require the defendant to attend an alcohol awareness program within 90 days of the date of final conviction (day judge enters judgment). The court uses Section 311.014, G.C., to determine when the defendant must return with proof of completion. If the defendant does not complete the course, the court may extend the time period another 90 days. The court does not count the day the court orders the extension, but starts the time period by counting the next day and then counts 90 calendar days. If the defendant fails to complete the course, the court must order the Texas Department of Public Safety to suspend or deny issuance of the defendant's driver's license for a period not to exceed six months. To count months, the court counts the day of the order of suspension or denial of issuance of the driver's license and concludes on the same day in the month the court orders the suspension to end. If the court orders the suspension to be a number of days, the court would use Section 311.014, G.C., rules for counting days.

Click here to view calendar

- When a defendant is ordered to complete a tobacco awareness program within 90 days after the date of conviction, the court does not count the day the court entered judgment but starts the next day and counts 90 calendar days. If the defendant fails to complete the tobacco awareness program, the court must order the Texas Department of Public Safety to suspend or deny issuance of the defendant's driver's license for a period not to exceed 180 days after the date of the order. To count this time period, the court must use Section 311.014, G.C.

Click here to view calendar

- To count the 30-day time period for when the time payment fee required by Section 51.921, G.C., is due, the court does not count the day that judgment is entered but starts counting the next calendar day. The court counts 30 calendar days. If the 30th day is a Saturday, Sunday, or a legal holiday, the defendant has until the next workday of the court to pay his or her fine, costs, and/or restitution by that day. The fee would be due on the next calendar day. According to Sections 111.0022 and 111.053, Tax Code if the payment is mailed on or before the due date, the court does not charge the time payment fee. There is no requirement for the court to receive the payment within a certain time period.



Click here to view calendar

Importance of Correctly Computing Time

Computing time periods correctly is important. For example, if a time period is not computed properly, the court might erroneously require a defendant to pay a time payment fee when it is not really due. If the court does not properly count the 12 month time period to determine if a defendant is eligible to take another driving safety course, the court might deny the defendant to the right to take the course.

Remember that courts have a duty to adhere to statutory provisions and rules and this includes computing time periods.

While prompt action is required of judges by the Code of Judicial Conduct, undue speed can cause errors to be amplified. Make sure to build delays into your system for the mailbox rule. Also add a day or two in the defendant's favor to avoid the impact of delays in important information passing through the office. Build some time into your system so mistakes can be caught and remedied before warrants are issued or people are called or contacted. That said, it is still important to act promptly enough that good addresses have not gone bad, or people have completely forgotten about their cases in your court.

Diversity continued from page 33

appreciation. Some courts offer free parking and coffee. TMCEC recommends that courts examine their treatment of jurors and determine how responsive they are to juror needs, making any needed changes. Particularly important is having a clerk in charge of assisting jurors, making sure that instructions given to jurors are clear. Remember that when jurors appear for jury duty, the clerk must provide a jury handbook to each juror who is then required to read it before jury service begins.[6] Copies of the handbook may be ordered from the State Bar of Texas at 512/463-1463 or 800/204-2222.

There may be other reasons for a lack of diversity on juries other than failing to have truly randomly selected panels. One reason is the use of peremptory challenges. In municipal courts, the prosecutor and the defendant have three peremptory challenges to exclude an individual from a jury without cause and without offering a reason. In the past, these peremptory strikes were used to discriminate by race, gender or other category. In *Batson v. Kentucky* (476 U.S. 79 (1986)), the U.S. Supreme Court held that racially based peremptory challenges violated equal protection. In 1994, the U.S. Supreme Court applied the same concept to gender (*J.E.B. v. Alabama ex rel T.B.* 511 U.S. 127 (1994)). See TMCEC *BenchBook*, Chapter 8, Checklist 40 for how to handle a *Batson* challenge.

When citizens are called for jury service, they are told that serving as a juror is one of the most important duties they can perform and that trial by jury is one of our most valuable constitutional rights. Let's make sure that Texas municipal juries represent a broad cross-section of our community and that our juries are well managed.

---

[1] Article 45.027(a), C.C.P.
[2] *The American Jury: Changes for the 21st Century*, Chicago: American Bar Association, 1999, page 8.
[3] www.abanet.org/justice/judicialbias/jury.html.
[4] Article 35.29, C.C.P.
[5] Article 45.027(c), C.C.P.
[6] Section 23.202, G.C.

E-mail Policy continued from page 35

Content Restrictions

An e-mail policy should define what appropriate content for an e-mail is and isn't. A statement making it clear that users must exercise the same care in drafting an e-mail message as they would for any other written communication that would be on court letterhead is a clear way to do just that. A policy should also state that the sender should be truthful and accurate. It should also specifically prohibit content that is fraudulent, harassing, embarrassing, sexually explicit, profane, obscene, intimidating, defamatory, or otherwise unlawful or inappropriate.

Message Retention

The *Tech Corner* article in the last *Recorder* issue specifically covered the records retention issue of e-mail messages (see the March 2003 issue of *The Recorder*). In summary though, the e-mail policy should outline the retention policy consistent with the TSL *Local Government Records Act,*[3] dealing with retention, storage, and deletion.

Employee Sign-off

It is a good idea to have employees sign a statement that they have received, read, and understood a policy. This also provides a record for the court that the employee has read the policy.

An e-mail policy, as are all policies, is a guideline for behavior; it is not a document meant to demean or criticize staff. The more representative the policy is of the environment, the more likely the policy is to be followed. Also, there is no need to create a handbook on e-mail policy. Instead, incorporate the needed principles into the court's present policies and procedures or employee handbook.

Not sure where to start? Review the sample policy on page 35 of this newsletter. Contact the Texas State Library and Archives Commission[4] for the *Model Policy for Records Management Requirements for Electronic Mail.*

---

[1] www.tsl.state.tx.us.
[2] Taken from a presentation made by Bob Guz, entitled *E-mail Management: Writing an Effective Policy,* February 24, 2003.
[3] www.tsl.state.tx.us.
[4] www.tsl.state.tx.us.

Academic Schedule

New, Non-Attorney Judges:

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

12-Hour Judges:

June 5-6, 2003	**12-Hour Judges/Clerks**	Hilton Midland & Towers Still Open	915/683-6131	Registration due: 5/12

Judges 12-Hour Special Topic:

June 17-18, 2003	**Topic: Juveniles**	Omni Bayfront Corpus Christi Still Open	361/887-1600	Registration due: 5/23

New Clerks:

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

Clerks 12-Hour:

June 5-6, 2003	**12-Hour Judges/Clerks**	Hilton Midland & Towers Still Open	915/683-6131	Registration due: 5/12

Prosecutors:

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

Court Administrators:

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

Legislative Updates for Judges & All Court Personnel:

August 4, 2003	**Legislative Update**	Sofitel Houston	281/445-9000	Registration due: 7/11
August 8, 2003	**Legislative Update**	Omni Southpark Austin	512/448-2222	Registration due: 7/11
August 13, 2003	**Legislative Update**	Lubbock Holiday Inn Hotel & Towers	806/763-1200	Registration due? 7/11

Computer Skills 101

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

A Reminder!

Once registered, please call TMCEC if your housing needs change. You will be billed $80 plus tax if you reserve a room and do not use it. If you need to change your arrival date, contact the TMCEC offices to cancel the room (or to add a night) so that grant funds won't be wasted. If you must cancel on short notice (over the weekend before the seminar begins, for example), leave a message on the TMCEC answering machine. If it is arrival day (the day before the seminar begins), call the hotel and cancel your room directly. Also, leave a message for Beatrice Flores, the TMCEC Registrations Coordinator, at the hotel so that we know your plans. Hotel cancellation policies vary: Most hotels require cancellation by 5 p.m.; some require cancellation by 4 p.m. In South Padre Island, it is a 72-hour cancellation policy.

TMCEC 2002-2003 REGISTRATION FORM

Program Attending: _____ Program Dates: _____
[city]

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

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

Last Name: _____ First Name: _____ MI: _____

Names also known by: _____ Male/Female: _____

Position held: _____

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

HOUSING INFORMATION

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

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

Date arriving: _____ Arriving by: ❒ Car ❒ Airplane ❒ Smoker ❒ Non-Smoker

COURT MAILING ADDRESS

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

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

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

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

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 or minutes from the seminar site and have read the cancellation and no show policies in the General Seminar Information section located on pages 17-18 in the Academic Schedule. Payment is required ONLY for the assessment clinics and legislative updates; payment is due with registration form. Participants in the assessment clinics and legislative updates must cancel in writing two weeks prior to seminar to receive refund.

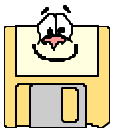
_____ _____
Participant Signature **Date**

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

Computer Skills 101

1609 Shoal Creek Boulevard #302, Austin, TX 78701
(Class will be held at the TMCEC Offices in Austin)

AGENDA



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

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

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

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

Choose to attend one of these dates!

❒ Friday, May 30
❒ Tuesday, June 24
❒ Wednesday, June 25

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

Registration Form

COMPUTER SKILLS 101

Name _____

HOUSING INFORMATION

(For those traveling over 45 miles from Austin)

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

Arrival date: _____

❒ Smoker ❒ Non–Smoker Gender: _____

COURT MAILING ADDRESS

Office Telephone _____

Office Fax _____

E-mail _____

City Represented _____

Date Hired _____

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

Already have access to a computer? ❒ Yes ❒ No

Type of computer: ❒ PC ❒ Macintosh

Computer experience in months or years: _____

Have you attended a TMCEC computer course before? ❒ Yes ❒ No

Which of the following would you like to spend more hands-on time learning?
❒ Word Processing (letters, forms)
❒ Spreadsheets (budgets, small databases)
❒ Internet Access/Email

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

_____
Participant Signature *Date*

Fill out and return to:

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

INSIGHTS INTO DIVERSITY

Broadening the Pool: Representative Jury Pools

When a defendant exercises his or her right to have a jury trial, the judge is required to issue a *writ of venire*.[1] The writ orders someone, usually the clerk, to summon jurors for the trial. Traditionally, when clerks summon a jury panel, they look to the voter registration rolls. Voter lists may not, however, necessarily reflect the diversity of a given community. Registered voters tend to be older and white, with higher income and greater education than the average citizen.[2] In a recent TMCEC poll of 20 municipal courts, nine indicated that they rely solely on voter registration lists. County panels were similarly selected many years ago. However, a more complicated method of selection using both voting rolls and driver's license records must now be used in the county's jury wheel creation. While the laws requiring this updated system do not apply to municipal courts, the principles behind this modernization certainly do. Other municipal courts indicated that they are broadening their pool by using the following lists:

- Water Department or Utility Records,
- Drivers License Records,
- Telephone Book,
- Tax Records,
- Commercial List Management (see below).

One clerk cautioned about the use of city utility records because often, after the death of a spouse, a widower will leave the name of the deceased on the utility bill. Also, in some cities there are apartment complexes that include utilities in the rent and, thus, the residents do not show up on the utility list.

Katy and North Richland Hills use a company called State, Metropolitan & County Services (SMCS) which provides list development and maintenance for approximately $150 for the original list and $75 for each update. Typically, the city provides the company with the zip codes within the city and a utility service list of all streets that the city incorporates. SMCS then combines these with Department of Public Safety driver's license lists (SMCS receives weekly updates). SMCS software then compares this list with the *National Change of Address* and *National Death* databases. Duplicates are eliminated and names/addresses are corrected. The revised list is emailed to the court ready for use. One city reported that, of its 58,000 residents, only 35,000 were registered voters and SMCS provided a list of 50,000 potential jurors. For further information, contact SMCS, 3939 Green Oaks Blvd., West Suite 101, Arlington, Texas 76016, telephone number: 888/887-7627.

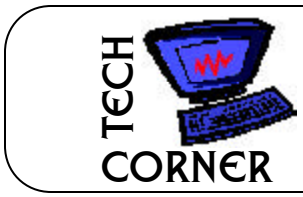
The American Bar Association's *Coalition for Justice* recommended states enact modernizations with three action steps:[3]

- Expand the juror poll through the use of motor vehicle license lists, unemployment and welfare rolls, and income tax filers.
- In areas with significant Native American populations, look to tribal governments to provide additional names of people to include in the jury pool.
- Develop public awareness programs on the importance of jury duty geared towards minority communities.

It is important to note at this point that juries should never be "handpicked" or deliberately made to fit any exact ratio. What the courts must assure is a representative panel. All of the biases that can be removed from the random selection process should be removed. Exact percentages will never be achieved in a random manner. The goal should be to have a system that excludes no group based on faulty information or unintentional exclusionary byproducts.

Frequently heard complaints by jurors include: inconvenience; missing work; long waits at the courthouse; inadequate crowded facilities for jurors; lack of respect and appreciation of jurors; transportation and parking problems; lack of understanding of the justice system; and summons not enforced. Some jurors, because of a lack of understanding about the justice system, are reluctant to give the court personal information on juror questionnaires. It helps to let jurors know that this information is confidential.[4] Some courts are now enforcing juror summons by filing contempt charges against jurors who fail to appear.[5] Some cities hand out juror appreciation certificates; in others, the judge writes a letter of

Diversity continued on page 29



Jo Dale Bearden
TMCEC Program Coordinator

Writing an Effective E-mail Policy

In the last *Tech Corner*, the idea of e-mail records retention was discussed. In this article, the discussion continues, but the scope is a little different. The court has now discussed its policy regarding e-mail and retention: Now what? Is it discussed and left as a verbal agreement? Of course not, this is the point where the court must develop an e-mail policy. Regardless of length or formality, it is widely accepted that any organization that uses e-mail as a medium should have some sort of e-mail policy. What isn't as clear is what should be included in that policy. This will depend some on the work environment of your court or city, but there are some general guidelines that can be made applicable for most organizations.

Starting at the beginning, who should be included in developing an e-mail policy? This will be determined mostly by your city and court structure. If the city already has an e-mail policy, don't reinvent the wheel; instead review it and see if it fits your needs. If not, discuss the changes with those who developed the policy. (See also, Sample Policy on page 35 of this newsletter.) If there is no policy and the court is starting from scratch, pull together various members of the staff to write the policy. If the city has an Information Technology (IT) department, they may have suggestions on what they would like to see in an e-mail policy, or they may have already created one for their use. Attempt to formulate your team from those employees who use e-mail frequently; the input from these employees will help make the policy workable. Of course, have the city attorney look over the policy, and the records retention information should be approved through the Texas State Library and Archives Commission.[1]

Again, an e-mail policy should be a personal document that represents the needs of the organization creating it and it should only contain regulations that will be followed. Following are suggestions for areas that an e-mail policy may cover.[2] Not all of these will be applicable to every court.

Ownership

In the policy, define that the computers, the software, and everything contained within are the property of the court and not the individual user. It can be taken further to include the e-mail system and e-mail messages, including attachments, are property of the court. For clarity, you may want to include that the e-mail system is provided to assist employees in the performance of work-related duties.

Personal Use

Personal use of e-mail is where the water is muddied a bit. The policy needs to accurately define the type of personal use that is permitted, if any. Define personal use as to what standard the employees will be held to, not what looks good on paper. Following are a few of the most commonly seen permitted usage statements:

- No personal use—difficult to monitor and enforce and may strain employee morale.
- No personal use within business hours—business hours will need to be defined. Personal messages should be read and responded to during breaks and lunch hours.
- Limited personal use—could be elaborated to say "may not interfere with staff productivity" or "may not affect any business activities."
- Enumerate specific types of personal uses that are prohibited—list specifically what is not allowed and allow all others, *i.e.* chain letters, commercial or personal advertisements, political materials are prohibited.

Privacy

An e-mail policy should address sending sensitive or confidential information via e-mail. All employees should be made aware that it is impossible to guarantee complete e-mail privacy. E-mail messages do not disappear when deleted; they are maintained on the hard drive and e-mail can be monitored without any indication that is occurring from internal and external parties. E-mail policy should also specify the types of messages, documents, and information that must not be sent via e-mail, such as confidential employee information.

E-mail Policy continued on page 29

Sample

Court E-Mail and Internet Use Policy

Date: _____

Purpose

This policy provides guidelines for the use of agency electronic mail (e-mail) and use of the Internet. It applies to both internal e-mail and external e-mail sent or received via the Internet. These guidelines do not supersede any city, state, or federal laws, nor any other agency policies regarding confidentiality, information dissemination, or standards of conduct.

Guidelines for E-mail and Internet Use

Business Use:

The agency e-mail and Internet access system is court property. Use of the e-mail and Internet system, except in the limited circumstances listed below, is for official court business only.

Confidentiality:

Employees should have no expectation of privacy regarding their use of the e-mail system, court e-mail content, and use of the Internet. All records created by Internet use, including path records, are subject to inspection and audit by management or its representatives at any time, with our without notice. Use of the agency's e-mail or Internet system by an employee indicates that the employee understands that the court has a right to inspect and audit all e-mail communications and Internet use and consents to any inspections.

E-mail Management:

In order to facilitate the maintenance of the court's e-mail system, e-mail should not be saved or maintained on the system for longer than necessary. The court periodically backs up all e-mail communications on the court system.

Personal Use:

Generally, the use of e-mail and the Internet should be used only for official court business. However, brief and occasional personal e-mails and surfing or browsing for non-business reasons is acceptable. Personal use of email and the Internet should not impede the conduct of court business; only incidental amounts of employee time -- time periods comparable to reasonable coffee breaks during the day -- should be used to attend to personal matters. Personal use of e-mail and the Internet should not cause the court to incur a direct cost in addition to the general overhead of the e-mail or Internet system. Consequently, employees should not store or print personal e-mail or Internet material.

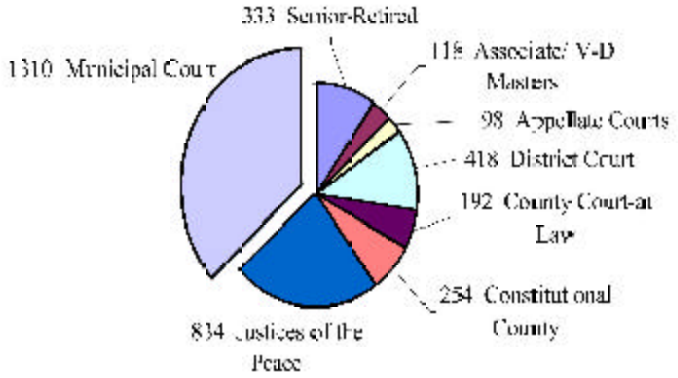
Restrictions:

- Accessing, posting or sharing any racist, sexist, threatening, obscene, or otherwise objectionable material (*i.e.*, visual, textual, or auditory) is strictly prohibited.
- E-mail and the Internet should not be used for any personal monetary interests or gains.
- E-mail and the Internet should not be used for political purposes.
- Employees should not subscribe to mailing lists or mail services strictly for personal use and should not participate in electronic discussion groups (*i.e.,* list serves, Usenet, news groups, chat rooms) for personal purposes.
- Employees must not intentionally use the Internet facilities to disable, impair, or overload the performance of any computer system or network, or to circumvent any system intended to protect the privacy or security of another user.

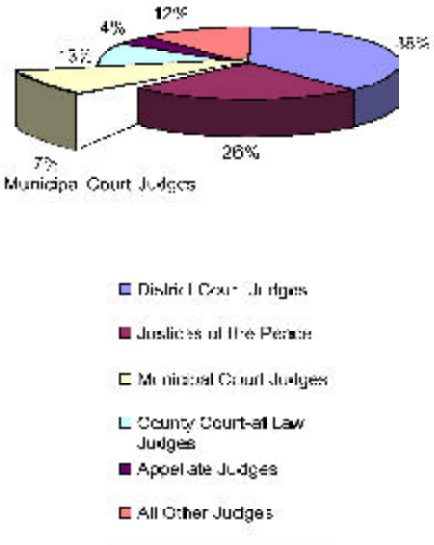
Signed: _____

Sample policy adapted from *E-mail and Internet Use Policy* of the Office of Court Administration, Austin. Used with permission.

Number of Texas Judges by Category
(FY 2002)
Source: Office of Court Administration



Percentage of Cases filed by Judge Type
(FY 2002)



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