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Appeals from Municipal Court Judgments

By Steve Fagan, Prosecutor, City of McKinney

In the May 2003 issue of the *Municipal Court Recorder*, Ryan Turner identified two appeal scenarios that are potentially frustrating to municipal judges and prosecutors: (1) “Leapfrog Appeals,” in which a defendant pleads guilty in municipal court in the hopes of appealing and obtaining a dismissal in county court; and (2) “Default Appeals,” in which a defendant fails to comply with the terms of deferred proceedings and—when a fine is imposed—appeals.¹ The article suggested that obtaining waivers is potentially a way of addressing these scenarios.

No Texas court has specifically addressed whether a defendant’s waiver of the right to appeal in municipal court is binding. In fact, recent case law and changes to the Rules of Appellate Procedure are redefining the contours of waivers of appeal from judgments in district and county courts.

This article is intended to build on Ryan Turner’s analysis by exploring more fully the law governing the right to appeal from judgments in municipal court and recent developments in case law governing waivers of appeal. I will also give suggestions to judges and prosecutors about how to approach the waiver issue.

Appeals from Municipal Court Judgments

The statutory right of appeal from judgments in municipal court comes from Article 44.02, Code of Criminal Procedure.² Those appeals are to a county court³ and are *de novo* if they are from a municipal court judgment, or restricted to errors reflected in the record if they are from a municipal court of record judgment.⁴

There are certain statutes and rules that bar appeals from plea-bargained convictions in district and county courts, but those statutes and rules do not apply to appeals from convictions in municipal court. (For purposes of limiting the right to appeal, a plea bargain occurs when the defendant pleads guilty or no contest, and the prosecutor makes a recommendation of punishment with which the defendant agrees.⁵)

For instance, Rule 25.2(a)(2) of the Texas Rules of Appellate Procedure requires that, unless the defendant is appealing matters that were raised in a written motion filed and ruled on before trial, he or she must have the trial court’s permission to appeal from a plea-bargained conviction in which the court accepted the agreed punishment recommendation.⁶ But the Rules of Appellate Procedure do not apply to appeals from judgments in municipal court. Those rules “govern

procedure in appellate courts and before appellate courts,” which are defined as “the courts of appeals, the Court of Criminal Appeals, and the Supreme Court,” and do not include county courts where appeals from municipal court judgments are heard.⁷

In addition, the “proviso” of Article 44.02 (the part of Article 44.02 after the word “provided”) does not apply to appeals from judgments in municipal court.⁸ The proviso is worded similarly to Rule 25.2(a)(2) and, until recently, acted as a bar to appeals from certain plea-bargained misdemeanor judgments.⁹ But the last sentence of Article 44.02 makes the proviso inapplicable to appeals under Article 44.17, which governs appeals from justice and municipal courts and from municipal courts of record.¹⁰

Finally, unlike judges in district and county courts, municipal judges do not

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AROUND THE STATE

TMCA Recognizes Outstanding Judge & Clerk

The Honorable Judge Robert J. Beasley of Garland has been selected by the Texas Municipal Courts Association (TMCA) to receive the Association's Outstanding Judicial Award. Judge Beasley received the special judicial recognition award at the TMCA Annual Convention held at the Doral Tesoro Hotel in Fort Worth September 9-11, 2004.

The award recognizes Judge Beasley for his contribution to the fair and impartial administration of justice. Judge Sonja Galbraith of Garland commented, "Judge Beasley and I have worked together as judges for the City of Garland for 16 years. He possesses every quality you hope for and expect a judge to have. He is honest, fair-minded, hard working, intelligent, knowledgeable in the law, and respected by staff, attorneys and citizens. I am very proud to serve alongside him and to count him as my friend."

Judge Beasley has served as the presiding municipal judge for the City of Garland since 1988. He has been the municipal judge for the City of Sasche since 1984 and the associate judge for the City of Mesquite since 1980. He was also appointed as municipal judge for the City of Crandall in 2003. Until 1996, he was in the private practice of law as a sole practitioner and with the law firm of Schuerenburg, Grimes and Beasley, P.C.

Lynda Kilgore, the Court Administrator for the City of Baytown, has been selected by TMCA to receive the Association's Outstanding Clerk Award. Mrs. Kilgore received the special award on September 10, 2004 at TMCA's Annual Convention in Fort Worth.

The award recognizes Mrs. Kilgore for her contributions to the administration of justice. Mrs. Kilgore has served the City of Baytown as court administrator since 1994 as deputy city clerk since 1982. She currently holds the office of Vice President of the Texas Court Clerks Association (TCCA), is President of the TCCA Gulf Coast Chapter and chairs and serves on several boards. She has served on the TMCEC faculty for court clerks and currently facilitates Level I study sessions for the TCCA clerk certification program. She encourages judicial education for court clerks through her participation on the TMCEC faculty, as a TCCA leader and as a local court administrator.

Mrs. Kilgore initiated a successful program in Baytown called Responsibility, Accountability & Pride (RAP) for parents of juveniles to attend counseling/training sessions along with their sons and daughters to help the entire family cope with the problems of youthful defendants. To accommodate working parents, she arranges Saturday sessions and often assists with the training. She was also instrumental in the planning and design of office space when the City of Baytown elected to build a new court facility.

Webster Court Administrator and TMCA Secretary, Luane Petrash, says, "While there are several court administrators in Texas who may be worthy of this award, Lynda has been an exemplary role model and inspiration to many and has proven to be an outstanding leader."

TMCEC congratulates both award winners.



FROM THE GENERAL COUNSEL

W. Clay Abbott

Technology and Security Fees

Frequently, courts call the TMCEC 800-line to ask whether they may spend Technology or Security Fees on particular items. The issue is really never a legal one but rather a practical one. Our answer is by no means an official one. The governing body of each municipality controls all expenditures of funds, including special funds like the Technology and Security Funds. Here are three suggestions for being accountable for such funds.

First, read the statutes. Each statute has a long list of items that may be purchased. Each list is prefaced by the term; “including.” This provides considerable, but not limitless latitude. The Technology Fund is found in Art. 102.0172, Code of Criminal Procedure, and the Security Fund is in Art. 102.017, Code of Criminal Procedure.

Second, ask the city attorney. The city attorney is responsible for providing legal guidance for the municipality. The opinion of the city attorney is the only available official legal opinion. The city attorney will also be the responsible party to defend the municipality’s expenditure of funds.

Third, make sure some form of review exists before expending funds. Nothing raises suspicions or looks worse after the fact than secrecy. Write up the proposal. Seek input on goals and solutions. Open up the process so that potential critics become vested participants. When you write up a proposal, keep an eye on the language in the statutes. Whenever possible, use those listed terms in defining your purchases. Finally, you may want to get outside advice on what you need.

Nothing justifies an expenditure better than an outside technology or security recommendation.

Many of you became aware that there was pending litigation in Tarrant County that had potential impact on the JP Technology Fund. We are always quick to sound the alarm, but often slow in sounding the “all clear.” That case—*Marcie Caldwell v. Carole Keeton Rylander, et al*—has been resolved in favor of collection of such fees. No appeals are pending and—to my knowledge—no similar litigation is pending. If you were holding your breath about the Technology or Security Fees, please stop.

Juvenile Confessions

Included on page 4 in this issue of *The Recorder* is a revised Statutory Warning of Juvenile. There is one small change; the line that previously allowed the specific offense alleged to be listed has been removed. Now the form simply reads, “an offense alleged to have been committed” without specifically listing that offense.

This change was made pursuant to a discussion that occurred in the Special Topic: Magistrates Duties school last year. Ryan Turner and the Honorable Deanna Burnett teaching *Taking Juvenile Statements* were posed with the possibility that a subsequently wrong offense might be entered in that space. Juvenile statements are usually made in the investigative stage where the final charge may be unknown or at least fairly fluid. If the juvenile offender was given information as to a charge—and thereby an expected consequence—that turned out to be incorrect, the issue of voluntariness is raised. Would the juvenile have given the statement

had he or she known a higher—or lower—offense might be charged? Following a long line of cases concerning unnecessary admonishments given inaccurately during pleas, our best suggestion was to avoid potential voluntariness issues by removing specification of the offense. Section 51.095, Family Code, does not require that the offense be identified; neither do the Federal Constitution, Texas Constitution or any other statute.

The old form is not incorrect, nor will its use invalidate a statement made after use of the form without significant other issues being raised. These changes are made in an effort to continually improve the products you receive from the Center.

The Last Word

It brings me much sadness to pen this section of what will be my final column. I have accepted a position with the Texas County and District Attorneys Association as the statewide DWI Resource Prosecutor. This is a great opportunity for me. It returns me to my first real love in the law: state criminal prosecution. I still think of myself as a prosecutor; “neutral and detached” will probably never describe me. I will get to train, prosecute and answer a whole new set of 800-line calls.

I will miss the excellent staff Hope Lochridge has assembled at the Center. I have no fear that you remain in capable hands. I will miss my close association with municipal judges and court support staff. I have taken more from you than I gave. But, I promise not to disappear. I plan on continuing to teach and be a part of the Center’s mission, just like I was before I became General Counsel.

Last Word continued on page 9

STATUTORY WARNING OF JUVENILE (Sec. 51.095, FC)

CAUSE NUMBER: _____

STATE OF TEXAS
VS.

§
§
§

IN THE MUNICIPAL COURT
CITY OF _____
_____ COUNTY, TEXAS

On this day before me, personally appeared _____, age _____ having been accused of an offense alleged to have been committed in _____ County, Texas, on _____, 200__.

I, _____, in my capacity as a magistrate informed (him)(her) of the following warning:

- You may remain silent and not make any statements at all;
- Any statement you make may be used in evidence against you;
- You have the right to have an attorney present to advise you either prior to any questioning or during any questioning;
- If you are unable to employ an attorney, you have the right to have an attorney appointed to advise you before or during any questioning and interviews with peace officers or attorneys representing the State; and
- You have the right to terminate the interview at any time.

I gave the foregoing warnings to the child at _____ o'clock, ____m. on the _____ day of _____, 200__ at _____ (*location*).

Magistrate
Judge of _____ Court
of _____, Texas

I acknowledge that I was given the above warning and I understand my rights as explained to me in the warning.

Person Warned

Juvenile refused to sign acknowledgement of warning.

Magistrate

Remarks:

Please replace the form on page 217 of the 2004 TMCEC Forms Book with this form.

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have to admonish a defendant under Article 26.13 before accepting the defendant's plea of guilty or no contest.¹¹ Article 26.13 requires the court to inform the defendant that: (1) the prosecutor's punishment recommendation is not binding on the court; (2) if the court does not follow the prosecutor's recommendation, the defendant can withdraw his or her plea; and (3) if the court does follow the prosecutor's recommendation, the defendant must have the court's permission to appeal matters that were not raised in a written pretrial motion.¹²

Waiver of Appeal: Pretrial, Pre-sentencing and Post-sentencing

A defendant can "waive any rights secured him by law."¹³ Post-sentencing waivers of appeal have long been held to be binding on defendants as long as they were made knowingly and voluntarily.¹⁴

But several early Court of Criminal Appeals opinions held that pretrial and pre-sentencing waivers of appeal were ineffective.¹⁵ Such waivers were thought to be involuntary as a matter of law because the defendant could not know with certainty what errors would occur at trial or what the punishment would be.¹⁶ In addition, it was believed a defendant could be influenced by a fear that his or her refusal to waive appeal could affect the sentence imposed.¹⁷

The Court's pretrial and pre-sentencing waiver cases were decided before the Legislature enacted statutes formalizing plea bargains.¹⁸ Before then, defendants could not withdraw their pleas if the judge did not follow the prosecutor's sentencing recommendation.¹⁹ In fact, at the time, there was a widespread (but probably erroneous) view that a trial court could not accept a defendant's plea if there was a plea bargain because the plea was motivated by the plea bargain.²⁰

Test Your Knowledge

Complete this short test before reading the FAQs from the 800-line article located on page 8 in this newsletter. Answer "yes" or "no."

1. If a defendant does not complete a driving safety course or the terms of deferred disposition, does the court add the time payment fee to the amount owed by the defendant at the time the judge enters a final judgment? _____
2. Can courts charge a deferred fee when granting deferred disposition? _____
3. If a defendant is charged with an offense in a school-crossing zone, does the defendant have the right to take a driving safety course? _____
4. Can the court double the fine of an offender who commits an offense in a school-crossing zone? _____
5. If a defendant charged with the offense of failure to maintain financial responsibility fails to appear and is arrested on a warrant, can the court assess the warrant fee if the case is dismissed because the defendant had valid insurance at the time of the offense? _____
6. If the court is doing an amnesty program, can the judge waive the warrant fee? _____
7. Can the court provide defendants with a list of driving safety schools in the area the court is located? _____
8. Is the municipal court required to have a municipal court seal? _____

After the Legislature established a statutory mechanism for accepting plea bargains, courts began to hold that pre-sentence waivers of the right to appeal were binding when made as part of a plea bargain.²¹ In *Blanco v. State*, the Court of Criminal Appeals held that pre-sentencing waivers of appeal made within the context of a plea bargain are enforceable against the defendant, at least when the waiver is made voluntarily, and the trial court follows the prosecution's sentencing recommendation.²² Since *Blanco*, several courts have applied its reasoning to pretrial waivers of appeal made as part of a plea bargain when the trial court followed the prosecutor's sentencing recommendation.²³

Recently, in *Monreal v. State*, the Court of Criminal Appeals synthesized its

analysis in *Blanco* with its post-sentence waiver precedent.²⁴ In *Monreal*, the defendant pled guilty to aggravated robbery, and a jury assessed his punishment at 18 years imprisonment.²⁵ The defendant then signed a written waiver of his right to appeal, but later filed a notice of appeal.²⁶ When the State moved to dismiss his appeal, the defendant contended his waiver was ineffective because it was not made as part of a negotiated plea.²⁷ Rather than simply applying its earlier precedent regarding post-sentencing waivers, the Court held that a knowing, intelligent and voluntary waiver of appeal, whether negotiated or non-negotiated, prevents a defendant from appealing without the trial court's consent.²⁸

Because *Monreal* involved a post-sentencing waiver, a remaining

question is whether a defendant's non-negotiated pretrial or pre-sentencing waiver of appeal bars him or her from appealing. The Court's earlier precedent held that such waivers were involuntary as a matter of law.²⁹ Since *Monreal*, several courts have applied that precedent to hold non-negotiated, pretrial or pre-sentencing waivers invalid.³⁰

But *Monreal* may mean the Court's earlier *per se* approach to non-negotiated pretrial or pre-sentencing waivers is no longer valid. Arguably, *Monreal* requires that the inquiry focus on whether the defendant's waiver was in fact made knowingly, intelligently and voluntarily no matter when it was made.

Admittedly, non-negotiated pretrial and pre-sentencing waivers will often implicate the concerns the Court expressed in its earlier cases, namely, that the defendant will not know what errors could occur at trial, what the punishment would be, or that the defendant may waive appeal out of fear that the failure to do so would affect the punishment imposed. This may not always be the case. In municipal court, for example, it is common for a court to set a window fine for defendants who wish to plead guilty or no contest through the mail or at the clerk's window. An affirmative waiver of appeal entered into at that time would arguably be binding on the defendant.

Suggestions for Judges

Timing is Everything

Because there is precedent from the Court of Criminal Appeals stating that non-negotiated pretrial and pre-sentencing waivers are suspect, wait until after the defendant is sentenced before inquiring whether he or she wishes to waive appeal.

Ask

Many defendants have not even considered appealing when they enter a plea. In fact, they consider it absurd that they would want to appeal when they are voluntarily entering a guilty or no contest plea. Nevertheless, the better practice is to inform defendants of their right to appeal, explain how to appeal, and explain how an appeal would proceed. After giving these admonishments, however, it is perfectly appropriate to inquire whether the defendant wishes to waive his or her right to appeal.

Get It in Writing

If a defendant asserts that he or she wants to waive appeal, have him or her sign a formal waiver. Such a written waiver, even in a non-record court, would go a long way toward showing that the defendant was informed of his or her right to appeal, but knowingly and voluntarily waived that right.

Get the Waiver after Granting Deferred Disposition

Deferred disposition may be granted after the defendant pleads guilty or no contest or is found guilty.³¹ A fine can be assessed at that time.³² Imposition of the sentence is delayed, and the defendant is instructed to meet certain conditions. If the defendant meets those conditions, the case is dismissed. If the defendant does not meet those conditions, then the sentence is imposed.

Arguably, a waiver of appeal entered into after deferred disposition is granted would not be enforceable because it is non-negotiated and occurs before sentence is actually imposed. On the other hand, because the defendant is aware of what the sentence is before he or she waives appeal, and because the defendant is aware of precisely what he or she must do to avoid the sentence being imposed, a waiver is knowing,

intelligent and voluntary. The Court of Criminal Appeals's holding in *Monreal* arguably supports enforcing the waiver of appeal.

Admonish the Defendant when there is a Plea Bargain

As mentioned previously, the admonishments in Article 26.13 need not be given in misdemeanor cases. But waivers of appeal must be made knowingly, intelligently and voluntarily. What better way of ensuring a knowing, intelligent and voluntary waiver than by giving the Article 26.13 admonishments? When there is a plea bargain, I suggest giving the admonishments orally and in writing and getting the defendant's signature acknowledging that he or she has been admonished.

Suggestions for Prosecutors

Plea Bargains

When making a plea bargain with a defendant, present him or her with a single document containing both the admonishments and the waiver. Have the defendant initial each admonishment and sign the waiver. In addition, request that the judge discuss the admonishments and the waiver with the defendant before accepting his or her plea. The Court of Criminal Appeals holdings in *Blanco* and *Monreal* support the argument that waivers of appeal in those circumstances are binding on the defendant.

Keep in mind, however, that when dealing with *pro se* defendants, prosecutors must carefully navigate around ethical shoals. A prosecutor cannot provide a defendant legal advice and cannot initiate or encourage efforts to obtain from an unrepresented defendant a waiver of important rights.³³ A prosecutor also has an obligation to see that justice is done.³⁴

Seek to Represent the State on Appeal

Article 45.201(c) gives the city attorney or deputy city attorney the right to represent the state on appeal with the county attorney's consent.³⁵ There is no better way of ensuring an appeal is prosecuted the way you want it to be than to do it yourself. The county attorney can say no, but it never hurts to ask.

Supply the County Prosecutor with the Argument and Authorities Supporting Dismissal

If the defendant waived appeal either as part of a plea bargain or after sentencing, then inform the county prosecutor of that fact and of the arguments and authorities that might support a dismissal. Encourage him or her to file a motion to dismiss based on your position. (You could even write a suggested motion.) Such a motion would involve little time for the county prosecutor. If he or she is looking for a way to move cases like these, your suggestions may be welcomed.

Conclusion

Defendants have the right to appeal convictions in municipal court. That right is conferred by statute and is not overridden by the fact that the conviction may have been the product of a plea bargain. A defendant pleading guilty or no contest with the intent of immediately appealing to the county court is well within his or her rights under the statute.

Defendants can also waive the right to appeal. No Texas court has held a defendant's waiver of the right to appeal in municipal court is binding. The question has never been specifically addressed. But recent case law from the Court of Criminal Appeals suggests such waivers would be upheld if they were made knowingly, intelligently and voluntarily.

When admonishing defendants about the right to appeal, judges can inquire whether defendants wish to waive their right to appeal. If a defendant is so inclined, then he or she can sign a written waiver. Such a waiver can be made even when the judge grants deferred disposition and would arguably be binding because it is entered into with a full understanding of the requirements of deferred disposition and what will happen if those requirements are not met.

Prosecutors should incorporate a waiver of the right to appeal in all plea bargains. Further, prosecutors should be aggressive about informing county prosecutors of the existence of a waiver in a given case and the arguments and authorities for upholding the waiver in the county court.

¹ Ryan Kellus Turner, *Waiver of Right to Appeal in Local Trial Courts of Limited Jurisdiction*, MUNICIPAL COURT RECORDER, May 2003, at 1, 7.

² TEX. CODE CRIM. P. ANN. art. 44.02 (Vernon 1979); see also *Ex parte Brand*, 822 S.W.2d 636, 638 (Tex. Crim. App. 1992).

³ TEX. GOV'T CODE ANN. § 26.046 (Vernon 1998); TEX. CODE CRIM. P. ANN. art. 45.042(a) (Vernon Supp. 2004).

⁴ TEX. CODE CRIM. P. ANN. art. 44.17 (Vernon Supp. 2004); TEX. CODE CRIM. P. ANN. art. 45.042(b) (Vernon Supp. 2004).

⁵ See *Shankle v. State*, 119 S.W.3d 808, 812 (Tex. Crim. App. 2003); see also TEX. CODE CRIM. P. ANN. art. 44.02; TEX. R. APP. P. 25.2(a)(2).

⁶ TEX. R. APP. P. 25.2(a)(2).

⁷ TEX. R. APP. P. 1.1, 3.1(b); see also *State v. Carson*, 13 S.W.3d 811, 812 (Tex. App. – Fort Worth 2000, no pet.); *Texas Dept. of Pub. Safety v. Fecci*, 989 S.W.2d 135, 138 (Tex. App. – San Antonio 1999, pet. denied).

⁸ Article 44.02 provides: "A defendant in any criminal action has the right of appeal under the rules hereinafter prescribed, provided, however, before the defendant who has been convicted upon either his

plea of guilty or plea of *nolo contendere* before the court and the court, upon the election of the defendant, assesses punishment and the punishment does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and his attorney may prosecute his appeal, he must have permission of the trial court, except on those matters which have been raised by written motion filed prior to trial. This article in no way affects appeals pursuant to Article 44.17 of this chapter."

⁹ The proviso was repealed in part when the Rules of Appellate Procedure were promulgated. See *Shankle*, 119 S.W.3d at 812 (n.5). Until recently, the proviso was still in effect in most misdemeanor cases because Rule 25.2(b)(3) was restricted to pleas entered in felony cases (*i.e.*, those governed by TEX. CODE CRIM. P. art. 1.15). *Lenox v. State*, 56 S.W.3d 660, 663 (Tex. App. – Texarkana 2001, pet. ref'd); *Taylor v. State*, 916 S.W.2d 680, 684-85 (Tex. App. – Waco 1996, pet. ref'd). The most recent revision to Rule 25.2 applies in both felony and misdemeanor cases. See TEX. R. APP. P. 25.2(a)(2).

¹⁰ *Id.*

¹¹ *Gutierrez v. State*, 108 S.W.3d 304, 309 (Tex. Crim. App. 2003).

¹² TEX. CODE CRIM. P. ANN. art. 26.13(a)(2),(3) (Vernon Supp. 2004).

¹³ TEX. CODE CRIM. P. ANN. art. 1.14(a) (Vernon 1979).

¹⁴ *Ex parte Tabor*, 565 S.W.2d 945, 946 (Tex. Crim. App. 1978); *Ex parte Hogan*, 556 S.W.2d 352, 353 (Tex. Crim. App. 1977); *Ex parte Dickey*, 543 S.W.2d 99, 101 (Tex. Crim. App. 1976), *overruled to the extent of conflict*, *Ex parte Hogan*, 556 S.W.2d at 353.

¹⁵ *Bailey v. State*, 543 S.W.2d 653, 655 (Tex. Crim. App. 1976); *Ex Parte Townsend*, 538 S.W.2d 419, 420 (Tex. Crim. App. 1976); *Smith v. State*, 440 S.W.2d 843, 844 (Tex. Crim. App. 1969).

¹⁶ *Ex parte Dickey*, 543 S.W.2d at 100; *accord Alzarca v. State*, 60 S.W.3d 203, 204-05 (Tex. App. – Houston [14th Dist.] 2001), *rev'd on other grounds*, 90 S.W.3d 321 (Tex. Crim. App. 2002); *Bushnell v. State*, 975 S.W.2d 641, 643 (Tex. App. – Houston [14th Dist.] 1998, pet. ref'd).

¹⁷ *Ex parte Dickey*, 543 S.W.2d at 101.

¹⁸ See *e.g.*, TEX. CODE CRIM. P. ANN. arts. 26.13, 44.02.

FAQs from the 800 Line

By Margaret Robbins, Program Director, TMCEC

Please see page 5 in this newsletter for a pre-test to be completed before reading this article. After answering the pre-test, correct your work using the answers shown below.

The following questions are from the Center's 800 line. Since these questions are frequently asked, I decided to address them in this column. If the answers generate discussion in your court or you are still unclear about the issues, please call the Center and we will be glad to discuss them with you.

Q If a defendant does not complete a driving safety course or the terms of deferred disposition, does the court add the time payment fee to the amount owed by the defendant at the time the judge enters a final judgment?

A No. The time payment fee is due on the 31st day after judgment is entered assessing the fine, court costs or restitution. (Section 133.103, Local Government Code) For a driving safety course and deferred disposition, the judgment assessing the fine and court costs is not entered until the end of the deferred period when a defendant does not complete the driving safety course or does not comply with the terms of the deferred. After the court enters this judgment, the court starts counting the next day as day number one. If the 30th day falls on a weekend or holiday, the 30th day will be the next working day of the court. On the next day—the 31st day—the time payment fee is due.

Q Can courts charge a deferred fee when granting deferred disposition?

A No. Courts are required to collect court costs at the time the

plea of guilty or no contest is made and before the judge grants deferred disposition. After the judge grants deferred disposition, the judge may require, as a term of the deferral, the defendant to post a bond in the amount of the fine to secure payment of the fine. At the end of the deferral if the defendant does not comply, the court may order the bond forfeited to pay the fine. If the defendant complies with the terms of the deferral, the judge is required to dismiss the case. After the judge dismisses the case, the judge may order the defendant to pay a special expense fee not to exceed the amount of the fine assessed at the beginning of the deferred disposition. (Article 45.051, Code of Criminal Procedure (C.C.P.)) There is no authority for a court to assess a deferred fee.

Q If a defendant is charged with an offense in a school-crossing zone, does the defendant have the right to take a driving safety course?

A Yes. If the defendant meets all the requirements of eligibility, the defendant has a right to take a driving safety course. Courts may be mixing up offenses committed in a school-crossing zone with offenses committed in a construction and work maintenance work zone, in which offenders do not have a right to a driving safety course. See Article 45.0511(p), C.C.P., for offenses for which a court may not grant a driving safety course.

Q Can the court double the fine of an offender who commits an offense in a school-crossing zone?

A No. Courts are mixing up offenses committed in a construction and maintenance work zone with offenses committed in a school-crossing zone. The judge has the discretion to double fines if the offense is committed in a construction and work maintenance work zone—not those committed in a school-crossing zone. The court must, however, collect \$25 for the Child Safety Fund if the offense is committed in a school-crossing zone.

Q If a defendant charged with the offense of failure to maintain financial responsibility fails to appear and is arrested on a warrant, can the court assess the warrant fee if the case is dismissed because the defendant had valid insurance at the time of the offense?

A No. Article 102.011, C.C.P., provides that this fee is collected upon conviction. If the case is dismissed, the court has no authority to order the defendant to pay the fee.

Q If the court is doing an amnesty program, can the judge waive the warrant fee?

A No. If the defendant is convicted of the offense and the warrant has been processed or executed by a peace officer, the court shall collect the \$50 warrant fee. (Article 102.011, C.C.P.) The judge, however, has discretion to reduce the

fine by \$50.

Q Can the court provide defendants with a list of driving safety schools in the area the court is located?

A Yes. Section 543.114(a), Transportation Code, provides that driving safety schools may not distribute written advertisement within 500 feet of a court. Section 543.114(b) provides, however, that this prohibition does not apply to distribution of

information by a court. Hence, the court could provide a list of driving safety schools to defendants requesting the course.

Q Is the municipal court required to have a municipal court seal?

A Yes. Article 45.012(g), C.C.P., requires the municipal court to have a municipal court seal to be attached to all papers issued out of the court, except subpoenas. The seal is also to be used to authenticate the official

acts of the judge and clerk. It may be created by electronic means or it may be an embosser or inking stamp. Article 45.012 does not provide the wording on the seal. Section 30.000125, Government Code, requires court seals for municipal courts of record to include the phrase, "Municipal Court of/in _____, Texas." This wording should probably also be used by municipal courts that are not record courts.

Appeals continued from page 7

¹⁹ *Bushnell*, 18 S.W.3d at 642 (citing *Cruz v. State*, 530 S.W.2d 817, 821 (Tex. Crim. App. 1975)).

²⁰ *Bushnell*, 975 S.W.2d at 642-43 (quoting Act of May 27, 1965, 59th Leg., R.S., ch. 722, § 1, art. 26.13, 1965 Tex. Gen. Laws 317, 427); see also *Cruz*, 530 S.W.2d at 821-22.

²¹ *Blanco v. State*, 996 S.W.2d 345, 347 (Tex. App. – Texarkana 1999), *aff'd*, 18 S.W.3d 218 (Tex. Crim. App. 2000); *Bushnell*, 975 S.W.2d at 644; *Turner v. State*, 956 S.W.2d 789, 790 (Tex. App. – Waco 1997, no pet.); *Doyle v. State*, 888 S.W.2d 514, 518 (Tex. App. – El Paso 1994, pet. ref'd).

²² *Blanco v. State*, 18 S.W.3d at 219-20.

²³ *Stanley v. State*, 111 S.W.3d 773, 774-75 (Tex. App. – Fort Worth 2003, no pet.); *Carlton v. State*, 91 S.W.3d 363, 365 (Tex. App. – Texarkana 2002, no pet.); *Alzarka*, 60 S.W.3d at 206; *Hilyard v. State*, 43 S.W.3d 574, 576-77 (Tex. App. – Houston [1st Dist.] 2001, no pet.); *Buck v. State*, 43 S.W.3d 275, 278 (Tex. App. – Houston [1st Dist.] 2001, no pet.); *Williams v. State*, 37 S.W.3d 137, 140 (Tex. App. – San Antonio 2001, pet. ref'd).

²⁴ *Monreal v. State*, 99 S.W.3d 615, 622 (Tex. Crim. App. 2003).

²⁵ *Id.* at 616.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 622.

²⁹ See note 13, *supra*.

³⁰ *Tufele v. State*, 130 S.W.3d 267, 270 (Tex. App. – Houston [14th Dist.] 2004, no pet.) (pre-sentencing waiver); *Perez v. State*, 129 S.W.3d 282, 287-88 (Tex. App. – Corpus Christi 2004, no pet.) (pre-sentencing waiver); *Hargesheimer v. State*, 126

S.W.3d 658, 659 (Tex. App. – Amarillo 2004, pet. ref'd) (pre-sentencing waiver); *Talbot v. State*, 93 S.W.3d 521, 523-24 (Tex. App. – Houston [14th Dist.] 2004, no pet.) (pretrial waiver).

³¹ TEX. CODE CRIM. P. ANN. arts. 45.051(a), 45.051(c), 45.052(a)(2), 45.053(a), 45.054(a) (Vernon Supp. 2004).

³² See e.g., TEX. CODE CRIM. P. ANN. arts. 45.051(d) ("If . . . the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the judge may impose the fine assessed or impose a lesser fine."); 45.051(c) ("The court shall enter judgment on the defendant's plea of no contest or guilty at the time the plea is made, defer imposition of the judgment, and allow the defendant 90 days to successfully complete the approved driving safety course."); 45.053 ("If at the conclusion of the deferral period satisfactory evidence . . . is not presented, the justice or municipal court may impose the fine assessed or impose a lesser fine.").

³³ See TEX. DISCIPLINARY R. PROF'L CONDUCT 1.06(a), 3.09(c), *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app. A (Vernon 1998). I take the position that a plea bargain does not involve the pure waiver of rights, but rather an exchange in which a defendant elects to avoid trial in consideration for the prosecutor's sentencing recommendation.

³⁴ TEX. CODE CRIM. P. ANN. art. 45.201(d) (Vernon Supp. 2004).

³⁵ TEX. CODE CRIM. P. ANN. art. 45.201(c) (Vernon Supp. 2004).

Last Word continued from page 3

I will close with my second favorite Theodore Roosevelt quote, one that so clearly sets out the vital missions of our oft overlooked courts.

*No man is above the law,
And no man is below it;
Nor do we ask any man's permission
when we require him to obey it.
Obedience to the law is demanded
as a right,
Not asked as a favor!*

—Theodore Roosevelt, 1904

Retesting for Level II Certification

Effective October 1, 2004, persons who fail part(s) of Level II can retake the part(s) that they did not pass instead of retaking the entire exam. This is retroactive, and all persons who have already sat for Level II and failed part(s) may reschedule to retest for just those failed parts. Cost will be \$25 per part.

Contact Jo Dale Bearden at TMCEC for more information (telephone: 800/252-3718 or email: bearden@tmcec.com).



COLLECTIONS CORNER

Financial Evaluation and the Defendant Interview

By Jim Lehman, Collections Specialist, and
Don McKinley and Russ Duncan, Assistant Collections Specialists, Office of Court Administration

A NOTE FROM TMCEC

This article was created to assist court support staff in effective collections. Clearly, not every suggestion is appropriate for municipal judges who, under the Code of Judicial Conduct, have a duty to remain impartial. Court support staff should also recall their duty to reflect the judge's ethical obligation to remain patient and dignified with all court participants, including those who fail to comply with the court's orders.

This month is the first article in a two-part series.

A. Initial Contact

First impressions are extremely important in court collections. The collections coordinator or department should convey to the defendant, "I/WE ARE IN CONTROL." Strategically placed signs in your court should convey instructions, rules and requirements, and should give the defendant all the information he or she requires before contact with a collections staff member is ever made. By the time the defendant reaches the initial contact point with the collections coordinator or collections department, there should be no question about who is in charge. Expect the defendant to respond to the office's ambience. If it is sloppy and presented casually, the defendant will reciprocate. If it is clean and professional in appearance, the defendant will also reciprocate. The goal is to set and maintain a serious, professional tone. Food and drink must not be allowed. Everyone, other than

the defendant and his/her attorney, should be asked to wait in the lobby area or elsewhere. A crowd tends to take on a character of its own and most often agitation comes from those who have no business with the department.

B. Initial Processing

Without question the most important and the most difficult job in the system is initial processing. The primary reason for this is that the defendant, who immediately reports to the collections coordinator's office or collections department from court, is often dazed, confused and almost always upset. Even though steps have been taken to present a clear and reasonable picture of what to expect, the defendant is rarely prepared for the post-sentencing process. The collections coordinator or collections department is faced with the task of extracting information from an unwilling, often hostile defendant, while setting and maintaining a serious, professional tone. Remember, however, the collections coordinator or collections department serves the court, not the defendant.

Equally important to remember is the philosophy of inconvenience. More than a few defendants have been encouraged to pay what they owe immediately to avoid the inconvenience of the collections process. It is not designed to be a fast and easy "customer service" type process. It is important, however, to treat each defendant with respect and dignity.

The objectives of initial processing are to:

- establish and maintain control of the processing environment;
- set a serious, professional tone by presenting a controlled, organized environment;
- explain processing steps to defendants and provide them with a detailed, yet simple, set of instructions;
- ensure each defendant fully completes the application for extension of time to pay court costs, fees and fines form;
- verify the information provided on the application;
- prepare for the interview;
- ask for payment in full; and
- answer questions and walk-in inquiries.

C. Application and Verification.

If a defendant is unable to pay in full on the day of sentencing, he or she must complete an application for extension of time for payment of court costs, fees and fines prior to the interview with the compliance officer or collections coordinator. The defendant is advised that the information provided on the form will be verified.

The application form asks for detailed information about a defendant's financial situation, including employment, assets and obligations. Two different forms can be used: a

long form and short form. In an effort to encourage those who can pay in full to do so, some collection programs in Texas use a long form (four to five pages in length). Often defendants will choose to pay in full rather than complete a long, detailed form (copies of the application forms are available upon request, or refer to the *TMCEC Forms Book* for an example). The short form version is similar to the long form but usually is only one to two pages in length. The prospect of completing even a short form motivates some defendants to pay their court costs, fees and fines in full on the day of sentencing.

After an application form is completed and prior to the interview, a collections coordinator or compliance officer will review the form for completeness and verify the information provided. If a defendant provides accurate residential and employer information, then the remainder of the information on the form is usually accurate.

If any part of the application is incomplete, or inaccurate information is provided, the collections coordinator or compliance officer will require the defendant to make appropriate adjustments. The defendant is also informed that incomplete and/or inaccurate information will delay processing and that defendants completing the form properly will be seen first.

Until this point, the defendant has probably not been required to supply such detailed information. Some are unprepared and/or unwilling to disclose information because they are uncertain what information will serve their particular interests. For example, if the information provided by the defendant indicates there is an abundance of surplus monthly income, the result may be a larger than desired payment. If, on the other hand, the information suggests a significant deficiency in monthly income, the application may be

rejected altogether, and the consequences of rejection are unclear.

Generally, expect problems on applications where one or more of the following issues exist:

- no residential telephone;
- no residential street address;
- other than by mail, the only way to contact the defendant is by pager;
- same telephone number for home, place of business and references;
- no relatives; and
- no landlord.

The completed application should be kept in a separate file for security reasons. The information provided in the application can be used to contact a defendant in case of default. Ultimately, the application may be the collection coordinator or department's only link to the defendant once he or she leaves the court. It must be complete and accurate without exception.

The collections process should include verification of the accuracy of the information furnished by the defendant. Verifications eliminate assumptions and guesswork; thereby limiting fraud and deception and reducing the risk of non-payment.

One of the quickest, easiest methods of verification of a defendant's financial information is to review home address, home telephone number and employment information. With the defendant present, the interviewer or processor calls the home telephone number. If the number is bad or disconnected, the situation can be addressed immediately and the defendant may be forthcoming about other inconsistencies on the application. If the home telephone number is good, move on to employment verification. Many employers will not give information over the telephone or will

only verify through their human resources department. Verification of employment may be easily obtained by simply asking to speak to the defendant (who happens to be sitting in your office). The response should indicate whether the defendant is actually an employee.

D. The Applicant

The collections interviewer is on a mission to find the truth. The goal is to gain access to information which will correctly portray the financial situation of the defendant. Expect an array of excuses and attitudes designed to get the defendant his or her way.

E. Flat Refusals

There will always be at least one defendant that will challenge the process by either providing totally erroneous information or refusing to provide any information. Such instances should be handled carefully, but forcefully. The manager or person in charge should speak with this person to determine the facts. If the defendant is just being difficult, he or she should be asked to leave or taken immediately back to court. If the defendant "walks out," the warrant process should be initiated and a warrant issued as soon as possible. If the defendant insists on seeing the judge, the judge should be notified immediately of the situation. Make sure the judge knows exactly what has occurred. It is not unusual for a defendant to suddenly become very cooperative in the presence of the judge.

F. Crunch Time

Generally, the pace for processing new applicants will be moderate to slow; however, most collections coordinators or departments will experience a crunch time. This is a peak period for court activity. Normal peak periods for a court may occur between 10:00 a.m. and 2:00 p.m. It is important that collections staff are

prepared for this period. Lines form, crowds gather, and people get anxious. A crowd has a tendency to take on a character of its own. People who are normally quiet may become loud and boisterous in the security of a crowd. If your waiting area or application area is small, it is especially important you have some form of authority consistently visible. Organization and control are the keys to dealing with crunch time.

G. Expectations and Consequences

It is very important that the defendant have a good idea of what is expected before meeting with the interviewer. Target payment goals (*e.g.*, 50% within 48 hours; 80% within 30 days; and 100% within 60 days) should be displayed on the walls of the collections office, be part of the defendant's written instructions for completing an application for extension of time for payment and be conveyed to the defendant by the collections staff during initial processing.

H. The Interview (Eligibility and Financial Evaluation)

The purpose of the interview is to determine whether a defendant qualifies for an extension of time for payment of his or her court-ordered assessment by evaluating his or her financial situation and ability to pay in full on the day of pleading and/or sentencing. Using the information provided on the defendant's application, the interviewer will conduct a personal interview with the defendant.

During the interview, the interviewer must make certain the defendant understands his or her responsibilities and the consequences of failing to meet those responsibilities. Every aspect of the case relating to the payment of court costs, fees and fines must be addressed clearly and concisely. No detail is too small. The

interviewer must ensure that the defendant can never honestly use the phrases "I didn't know" or "No one told me" regarding the payment of court costs, fees and fines. This can best be accomplished if the interviewer is in complete control throughout this process.

Establishing control of the interview immediately is essential. Generally, a conversation is controlled by the individual asking the questions. In many courts, compliance officers or collections coordinators are trained to begin every interview by first identifying themselves. The identification establishes the officer's role and the question immediately puts him or her in control of the conversation. In some municipal courts, compliance officers or collections staff wear court badges, displaying them at the time of identification. This helps establish a serious tone, emphasizing the authoritative role of the interviewer.

After the interviewer has established control, an assessment must be made of the defendant's application. Although during initial processing the application should have been screened for problems, the application should be reviewed a second time.

The interviewer must check the application for missing items, such as social security number, driver's license number, and birthdate. Often a defendant will intentionally omit identifying information in an effort to conceal assets or create confusion. The interviewer must also check whether the same telephone number is listed for residence, place of business, and references. The fewer places for contact given by the defendant, the fewer chances of contact by the court later if needed. The interviewer must further check for inconsistencies. A local residential address with an "out of town" job telephone number should raise eyebrows. The absence of

a landlord should also be strongly contested. Almost everyone has a landlord—be it a parent or the local motor inn. The absence of a landlord should mean either the defendant is homeless, or has a substantial free and clear asset. In either case, an address or place where the defendant receives his or her mail should be obtained.

Eligibility criteria vary from city to city and are usually based on some combination of the socioeconomic factors and the general demographics of a region. Many courts have established the following criteria for eligibility for extensions of time for payment:

- **Net Surplus/Negative Income:** Calculation of monthly obligations required for minimum mandatory household maintenance subtracted from the total net monthly income as provided by the defendant. Whether a defendant has a surplus or negative monthly cash flow should be considered when determining the defendant's ability to pay the assessment.
- **Poverty Threshold:** A comparison of the gross annual income of the defendant (taking into account the number of dependents, if any, the defendant must support) with federal poverty threshold figures, which are provided in the *Social Security Bulletin, Annual Statistical Supplement* (www.ssa.gov/policy/docs/statcomps/supplement/).
- **Cash Access:** An assessment of available cash based on information provided by the defendant and verification of this information by collections staff.
- **Criminal Case History:** The defendant's criminal case history is examined to determine positive or negative payment patterns or trends from prior or current cases.

A decision on eligibility is made based on analysis of the above criteria. The

analysis is documented on a *Financial Evaluation Worksheet*, which lists each criteria and the defendant's status in each category. The worksheet becomes a permanent part of the defendant's payment plan file, which is available to the court upon request. Due to privacy issues, this information should not be a part of the court file.

It is important for the interviewer when reviewing finances to probe for additional income or additional expenses. The interviewer must look for inconsistencies. Monthly expenses of \$2,000 cannot be sustained on an income of \$100 per week. The interviewer should ask about roommates, rental property, child support, and trust funds. The goal is to get as clear and accurate of a picture of the defendant's financial situation as possible.

I. Establishing a Payment Plan

If the defendant is eligible for an extension of time to pay court costs, fees and fines, the interviewer will establish a plan for payment. The interviewer will review the court's assessment with the defendant. Regardless of the results of the financial analysis, the interviewer should always ask the defendant for payment in full. The defendant should have been previously advised that all court costs, fees and fines are due on the day of pleading or sentencing. Few defendants come to court unprepared to pay anything and the number of those who come prepared to pay everything is surprising. Equally surprising is the number of defendants who will not pay, even if prepared to do so, unless they are properly encouraged, motivated and asked. If the defendant is not prepared to pay in full, ask how much he or she is short.

Allowing a defendant the opportunity to pay court costs, fees and fines over time should be treated as an exception to the standard rule of payment in full at the time of pleading or sentencing.

By reviewing this matter with the defendant, the interviewer puts the payment situation in proper perspective and sets a serious tone. The message should be conveyed that the payment plan option exists because of the court's sensitivity to the defendant's situation.

During the development phase of the collections department, the payment guidelines to be followed by the department should have been established. The guidelines must be reviewed and approved by the judge(s) of the court. Moreover, they must be detailed and comprehensive, taking into account virtually every imaginable scenario. The interviewer uses these guidelines to set up a plan for payment.

The payment target goals, criteria and guidelines will vary from city to city. It is important that the court and the collections coordinator or department are comfortable with the guidelines and that they solicit the desired response. Remember, a fine is a punishment for a crime. It is not supposed to be a pleasant experience.

PAYMENT TARGET GOALS

48 hours	50 percent
30 days	80 percent
60 days	Balance

Payment target goals of 50 percent in 48 hours, 80 percent in 30 days, and the balance in full within 60 days or, half in 30 days and the balance in 90 days, are prime examples and should be rigidly enforced. Studies show that most assessments not paid within the first 60 days following judgment are **not** likely to be paid at all. There are always exceptions to the payment target goals, and collection coordinators or compliance officers should have the authority and/or flexibility to extend terms to a maximum of 120 days.

The plan established must be within the scope of the defendant's ability to pay, but not necessarily convenient. Objections by defendants will be frequent, but remember, in most instances the defendant has had considerable advance notice of when payment would be due and time to make arrangements.

The interviewer should approach the evaluation and ultimately construct the payment plan based on the premise that virtually everyone, given a maximum of 60 days (if that is the target goal), can find and acquire the resources to pay their assessment. Establishing a plan is not about fitting a small monthly payment into the "already" overextended budget of a defendant. Straying from established target goals should be avoided. Most defendants have access to undeclared resources and they should be encouraged to use them. This approach may seem harsh, but it actually benefits everyone, especially the defendant, by speeding up the process. Defendants with real problems prove their inability and can be dealt with accordingly, including indigency hearings when applicable. The defendant's application for extension of time to pay can be used to show or demonstrate indigency.

J. Reviewing the Agreement

The agreement should be brief and as simple as possible. It should clearly set forth the terms and conditions of payment, including payment amounts, number of payments and due dates. The interviewer must painstakingly review each detail of the agreement with the defendant, making certain that the defendant understands one detail before proceeding to the next, reducing and/or eliminating confusion.

It is important for the interviewer to emphasize to the defendant that the agreement is part of a court order and violating the court order could subject the defendant to arrest.

The interviewer must make certain that the defendant understands that while the agreement is financial in nature, it is not comparable to a loan or a debt and should not be treated as such. The interviewer also must make certain that the defendant understands that the agreement may be rescinded by the collections coordinator or department at any time for any reason.

Grace periods are adamantly discouraged. Every due date should be treated as a court-ordered deadline, carrying swift and severe consequences if missed. Effectively communicating terms, conditions and penalties in this setting will have a profound effect on the defendant's performance throughout the term of the agreement.

K. Reviewing the Payment Procedure

Confusion is a common excuse for nonpayment and is usually at the source of improper payment. The interviewer must review every aspect of the payment process with the defendant, from mailing addresses of the court to properly affixing a postage stamp. Having a variety of payment options is helpful, but the interviewer must remember to explain each option in detail. If the department has a "drop box," complete information about the location of the box must be provided. If payment is accepted by credit card, debit card or electronically, all these options and instructions for their use must be reviewed and explained in detail to the defendant.

Some collections coordinators and departments provide defendants with self-addressed envelopes for accuracy and convenience. Once again, the idea is to prevent the honest use of the phrases "I didn't know" or "No one told me." Any process or procedure that will facilitate the successful delivery of the payment on or before the date it is due is encouraged.

It is equally important for the interviewer to explain to the defendant

unacceptable methods of and places for payment. For example, personal checks will not be accepted. Any situation that could create confusion or delay payment must be properly addressed during the interview.

L. Concluding the Interview

Some collections coordinators or departments require the defendant to present some form of identification at the beginning or end of the interview, and it is compared to the information provided on the application. A photocopy of the driver's license or identification is made and/or relevant information is copied from it and recorded on the defendant's application. The information becomes a part of the defendant's time payment plan file. Some departments will ask for and keep the defendant's identification during initial processing as a way of ensuring he or she will not leave prior to being seen by an interviewer. A digital photo of the defendant may also be taken and included as part of the file.

The interviewer should check that each document requiring a signature has been properly signed. In addition, the interviewer should review one final time with the defendant the payment terms, conditions and procedures. After each item is reviewed, the defendant should be asked whether he or she understands it and if there are any questions.

It is recommended that the defendant's copies of the documents (*e.g.*, payment agreement, payment schedule, *etc.*) be placed in an envelope marked, "Court Costs, Fees and Fine." The interviewer should enclose a business card that provides the defendant with the telephone number of the department, a contact person, his or her case number, and the court.

To ensure that each interview covers the same information in the same basic format, it is recommended that the

collections coordinator or department develop and use an interview checklist. A "canned" interview will defeat a claim by a defendant that he or she was not informed of a particular detail. It also creates a level of confidence among collections staff as to what information a defendant should have received during an interview. In other words, the collections coordinator or department cannot honestly be faulted for failing to provide the defendant with information he or she needs to comply with their agreement. Some defendants will incorrectly assume that the collections department is a poorly organized bureaucracy and that the staff can be easily confused. The entire collections process is designed to be exactly the opposite. A new collections coordinator or department must work to establish and maintain a reputation for being a no-nonsense, well-organized, professional operation.

M. Defendants with Multiple Cases

Often defendants will have multiple cases on a payment plan. Payment plans for multiple cases should be designed to be simple. If a defendant is given multiple payment plans with different due dates, it may become confusing when payments are due. A defendant may use this confusion as an excuse for not paying. A defendant may also have resources to pay one or two cases in full within the target period, but not the remaining ones. It is recommended that payments on such cases be staggered and/or sequenced to reduce confusion and allow the defendant the additional time usually needed to pay multiple assessments. For example, if four cases each have an assessment of \$150 or a total of \$600, the payments in the first case can be scheduled as follows: a \$75 payment is due within two days and the remaining balance of \$75 is due within 30 days. The payments in the second and following cases can then be scheduled as follows: a \$225 payment is due within 30 days, and \$225 is due 30 days later.

N. Community Service

For defendants who are unable to pay the assessed court costs, fees and fines, community service may be offered as an alternative. Article 45.049(a) of the Texas Code of Criminal Procedure provides:

(a) A justice or judge may require a defendant who fails to pay a previously assessed fine or costs, or who is determined by the court to have insufficient resources or income to pay a fine or costs, to discharge all or part of the fine or costs by performing community service. A defendant may discharge an obligation to perform community service under this article by paying at any time the fines and costs assessed.

Pursuant to Article 45.049(c), a judge “may order the defendant to perform community service work only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community.” Also, Article 45.049(e) provides that defendants receive “not less than \$50 of fines and costs for each eight hours of community service performed.”

Community service may be used for maintaining much of the city’s landscaping, recycling and housekeeping needs, saving the city hundreds or thousands of dollars in labor costs. It may also serve as an incentive to many defendants who miraculously find the resources to pay their court costs, fees and fines when faced with the alternative. Defendants with legitimate, verifiable physical disabilities, ailments, or conditions that prevent them from performing manual labor may be assigned to less stringent, more appropriate work assignments (e.g., recreation centers, libraries and food banks).

SUMMARY

1. The collections office should be IN CONTROL of the process.
2. Remember, part of the collections process is intended to be inconvenient in order to encourage defendants to pay in full on the day of sentencing. It is not supposed to be easy or customer friendly. The court is the customer.
3. The application for an extension for payment of court costs, fees and fines must be complete and accurate without exception.
4. Expect an array of excuses and attitudes from defendants that are attempts to force the process to work “their way.”
5. There will always be at least one defendant who will challenge the process by either providing totally erroneous information or refusing to provide any information.
6. The purpose of the interview is to determine whether a defendant has the ability to pay in full on the day of sentencing or qualifies for an extension of time for payment of his or her court costs, fees and fines.
7. The interviewer must make certain that the defendant understands his or her responsibilities and the consequences of failing to meet those responsibilities.
8. It is essential that the interviewer establish control of the interview immediately.
9. The best financial evaluations include verification of the accuracy of the information furnished by the defendant.
10. Eligibility criteria varies from city to city, usually based on some combination of socioeconomic factors and the general demographics of a region.
11. Few defendants come to court unprepared to pay anything, and the number of those who come prepared to pay everything is surprising. Always ask for payment in full.
12. Allowing a defendant the opportunity to pay his or her court costs, fees and fines over time should be treated as an exception to the standard rule of payment in full on the day of sentencing.
13. The payment plan established should be within the scope of the defendant’s ability to pay, but not necessarily convenient. Court assessments are not bills.
14. Straying from established payment targets or goals should be avoided.
15. Defendants with real financial problems must show their inability to pay and can be dealt with accordingly (e.g., indigency hearings).
16. Confusion is a common excuse for nonpayment; thus, any situation that can create confusion or delay payment must be addressed during the interview.
17. The collections coordinator or collections department should develop a checklist to ensure that each interviewer covers the same information with every defendant in the same basic format.
18. If a defendant is successful in having the court favorably deal with his or her objection(s), any future efforts to collect from this individual by the collections coordinator or department will be extremely difficult.
19. The court must have sufficient confidence in the collections coordinator or department and the collections process to send an objecting defendant back to the collections coordinator or collections department with firm instructions to cooperate.
20. The collections coordinator or department should have alternative enforcement options for satisfying court costs, fees and fines for those defendants legitimately unable to pay.

Tips and Tricks for Personal Computing

By Jo Dale Bearden, Program Coordinator, TMCEC

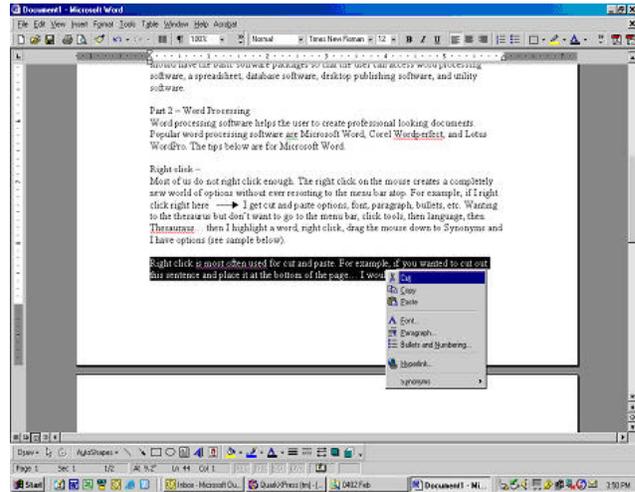
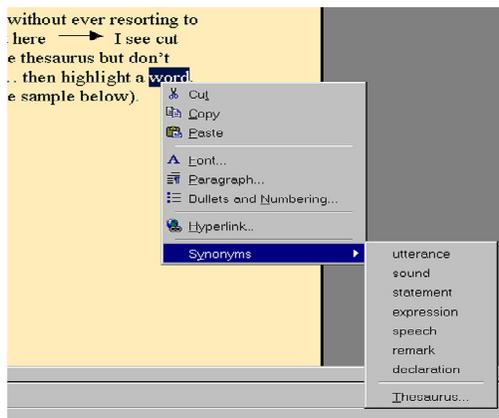
The best advice for personal computing is, “Don’t be afraid of the computer.” If you are not an avid computer user then computing may seem scary at first. Realistically (and under normal circumstances), you cannot break a computer. The way to really learn about computers is to keep trying things.

Personal computers are in our homes and offices ultimately for one purpose, to make life more efficient. If you are a person who is looking for ways to make life more efficient (and isn’t this all of us), you should be using the right-click feature on your mouse and shortcuts. CAVEAT: Each software program has its own right-click menus and shortcuts. This article will discuss common ones for Microsoft Word, Microsoft Excel and Microsoft Internet Explorer. But, if you are interested in the options other software programs may have, go to their Help feature and do a search for shortcuts.

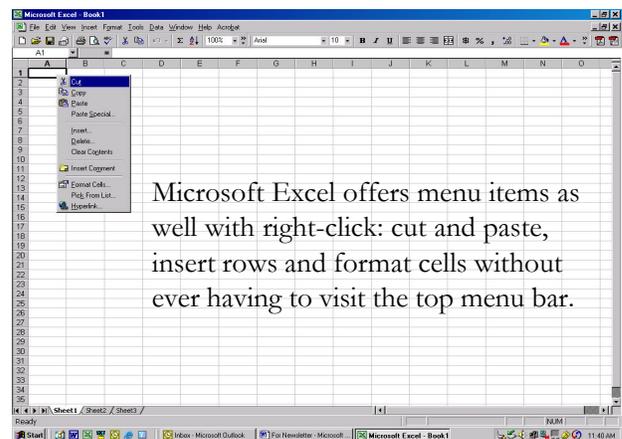
Right-click

Most of us do not right-click enough. Not sure what I mean? Most often, people click the left button to select an item. Well, the right button has its own function, a mini-menu function.

The right-click on the mouse creates a completely new world of options without ever resorting to the menu bar atop. For example, in Microsoft Word, if I right-click, I see cut and paste options, font, paragraph, bullets, *etc.* Do you want to access the thesaurus without going to the top menu bar clicking Tools, then Language, then Thesaurus? Instead, highlight a word, right-click, drag the mouse down to Synonyms and you will see a selection of synonyms (see sample below).



Right-click is useful for cut and paste. For example, if you want to cut out this sentence and place it at the bottom of the page, highlight the text to cut, right-click, choose Cut. Then put the cursor where you want to paste, right-click and choose Paste.



Microsoft Excel offers menu items as well with right-click: cut and paste, insert rows and format cells without ever having to visit the top menu bar.

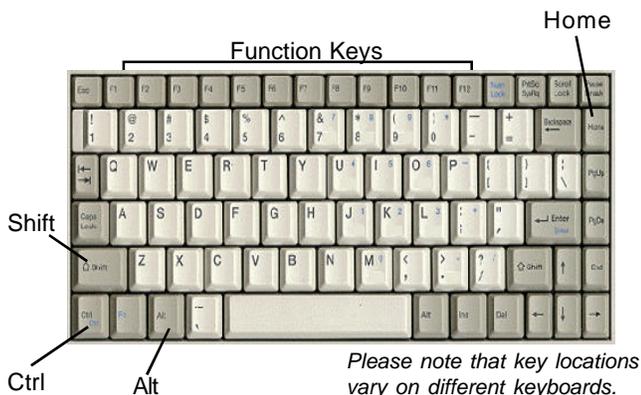
In Microsoft Internet Explorer, right-click on any link (usually a different color or underlined, which takes you to another page). Choose Open In New Window, and the new link opens the new page in a separate window. This is particularly handy if doing a search through Google, MSN or Yahoo. Once you are at the results page, it is nice to be able to open all the suggested results without ever losing your original results. (See sample on following page.)



As mentioned, almost all software programs have menu items using right-click. The best part of right-click is that, according to where you point the cursor, the right-click menu choices change to be the most used menu choices for the item that you are pointing at.

Shortcuts

If you have even less time than those using right-click, you may be a shortcut kind of person. Shortcuts are combination keystrokes that make something happen. For instance, take the thesaurus example from above. To make the synonyms appear even quicker, just hit SHIFT and F7. Whoa, let's back up a bit. The F keys across the top of your keyboard—also called function keys—are shortcuts programmed in most software. For example, F4 is a shortcut to repeat an action in Word. Highlight a word or phrase and make it bold and italicized using the traditional method of going to Format and Font in the top menu bar. Then, highlight another word or phrase and hit F4 to repeat the character enhancement features.



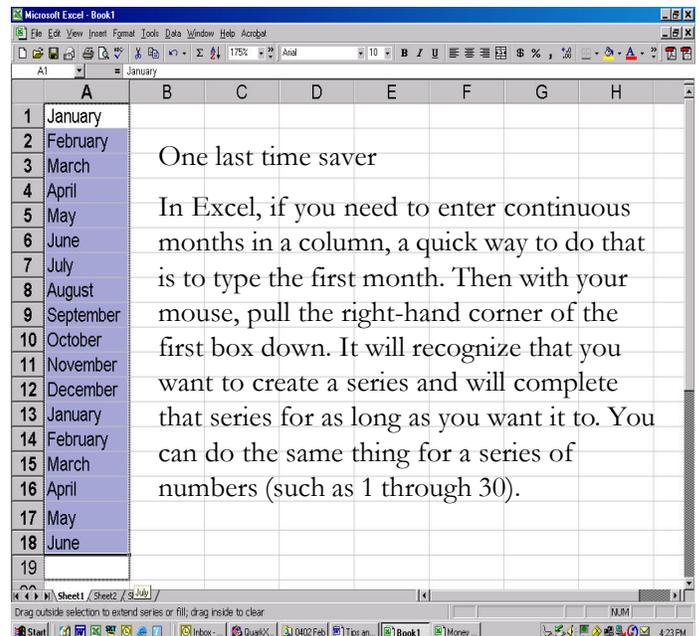
Ctrl (control), Shift and Alt are also commonly used in conjunction with other keys for shortcuts. Common shortcuts for use in Word and Excel include:

Copy selected text	Ctrl and C
Cut selected text	Ctrl and X
Paste selected text	Ctrl and V
Select all the text in a document	Ctrl and A
Bold selected text	Ctrl and B
Italicize selected text	Ctrl and I
Underline selected text	Ctrl and U
Print current document	Ctrl and P
Save current document	Ctrl and S
Open a document	Ctrl and O

Common shortcuts for Internet Explorer include:

Add website to your favorites	Ctrl and D
Go back to your home page	Alt and Home
Find term on the page	Ctrl and F
Open a new page	Ctrl and N
Select all the items on the page	Ctrl and A

Don't be afraid to try various combinations to see what they do. The goal is to decrease the time it takes you to create and edit documents.



Personal computing is meant to be user-friendly. Each day that you use your computer and practice shortcuts, it will become more user-friendly. Remember, YOU WILL NOT BREAK IT.

Now get out there and start computing efficiently!



RESOURCES FOR YOUR COURT

TCAT Offering Classes for Credit

The Teen Court Association of Texas (TCAT) will hold their Annual Conference in Ft. Worth at the Clarion Hotel, November 2-5, 2004. The Texas Court Clerks Association (TCCA) has indicated that they will accept four TCAT sessions for clerk certification program continuing education credit. Since some court clerks may also be coordinating a teen court, you will be glad to hear this. Following are the sessions for which you can get credit towards certification.

<i>Starting and Maintaining a Teen Court</i>	<i>1.0 hour</i>
<i>Personal Safety Training</i>	<i>1.25 hours</i>
<i>Youth Accountability</i>	<i>1.25 hours</i>
<i>Management of Anger</i>	<i>1.25 hours</i>

Additionally, Court Security Funds set aside for that specific purpose may be used due to the inclusion of the class on *Personal Safety Training*. Shauna Fitzjarrell and Fort Worth City Marshal Jesse Hernandez will talk about personal safety issues and give “hands on” personal defense techniques. (Wear something casual and comfortable for this.)

Following is the wording that indicates this conference **might qualify** for use of Court Security Funds set aside for this specific purpose.

ARTICLE 102.017, C.C.P.

Court costs; courthouse security fund; municipal court building security fund.

d. The clerks of the respective courts shall collect the costs and pay them to the county or municipal treasurer...a fund designated by this subsection may be used only to finance items when used for the purpose of providing security services for buildings housing a district, county, justice, or municipal court as appropriate, including:

d-11. Continuing education on security issues for court personnel and security personnel.

For a brochure and more information regarding the TCAT Annual Conference, please log onto the website at www.texasteencourt.com or call Susan Wolf, Conference Coordinator, at 817/392-8681 or email: susan.wolf@fortworthgov.org.

Annual Fees Reduced: Licensed Court Interpreters

The Texas Department of Licensing and Regulation (TDLR) recently reduced 29 licensing and registration fees. The annual fee for licensed court interpreters was reduced from \$175 to \$75.

To receive news and updates on any of the programs that TDLR administers, sign up for the TDLR email subscription service at: www.license.state.tx.us/newsletters/TDLRnotificationLists.asp.

GCAT Training

The Government Collectors Association of Texas (GCAT) has set November 11-12, 2004 as the date for its Annual Winter Workshop & Training Session. This event, to be held at Lakeway, is geared specifically for court collections training emphasizing techniques and tools that have impact and produce results. Lakeway is about 25 minutes west of the Austin area. The conference rates are \$80 single or \$110 double occupancy.

The schedule for this event has been designed to share the latest collections information from techniques to technology. Topics tentatively planned include: *Collections Overview, The Collections Process, Collections Management System, Challenges, Court Costs & Fees Update, Ethical & Professional Court Collections, Affordable Tools & Skip Tracing, and Amnesty & Warrant Roundups*. Please register early as GCAT is expecting this session to fill quickly. You may register and get additional details at the GCAT website at www.govcat.net, or contact Jim Lehman at 512/936-0991 or Nadine Jenkins at 936/538-8088.



FROM THE CENTER

Municipal Courts Week

During the week of November 1-5, 2004, municipal courts across Texas are encouraged to host events to recognize the work of local courts and personnel by celebrating Municipal Courts Week.

Possible activities include:

- Invite the city council and public to tour your court. Ask the presiding judge to make a short presentation.
- Invite a local high school government class to court and host a mock trial.
- Show the TMCEC video: *Role of the Municipal Court* to school and civic groups. Call TMCEC if you do not have a copy: 800/252-3718.
- Log onto the TMCEC website [www.tmcec.com] for more ideas!

In 2003, activities were held in Bastrop, Brenham, Bryan, Cisco, Cockrell Hill, Coppell, Elmendorf, Falfurrias, Garland, Harlingen, Irving, Midland, North Richland Hills, Princeton, Richland Hills, Round Rock, San Antonio, Tyler, Watauga, Weslaco, and Wichita Falls. A variety of events were sponsored, including local proclamations, balloons and candy, receptions, exhibits, student field trips, mock trials, Q & A sessions, a theatrical production, appreciation dinners, city council tours of court, open houses, amnesty programs, video showings, and newsletter and newspaper articles. “We hope for even



greater participation in 2004,” said TMCA President Dan Francis of Robinson. “This is an excellent opportunity for the court to educate the public and city council about municipal court.”

Courts are asked to send TMCEC copies of any press releases, newspaper articles, planning documents, and photographs that are developed locally to celebrate the important contributions of Texas municipal courts in local communities. These materials will be put on the TMCEC website for use by other courts and to encourage others to participate. Please send your materials to TMCEC, 1609 Shoal Creek Blvd., Suite 302, Austin, Texas 78701 or email them to tmcec@tmcec.com.

TMCEC expresses its appreciation to Texas Representatives Burt Solomons and Kenny Marchant who sponsored the House Resolution establishing this week.

Special Topic Judges’ Seminars: Magistrate Duties

TMCEC will offer two special topic seminars for experienced judges in the upcoming year. The 12-hour seminars will focus on the magistrate functions. Topics tentatively scheduled for address include: *An Overview of Magistrate Duties, Search and Arrest Warrants, Probable Cause, Presentation before the Magistrate, Setting Bail, Magistrates Orders for Emergency Protection, Examining Trials, Property*

Hearings, Emergency Mental Commitments, Federal and State Case Law Update, and Ethics. This program is designed for municipal judges who, in addition to their judicial duties, perform magistrate functions on a regular basis. This is the second year that TMCEC has offered this specialized course – those municipal judges who attended last year are **not** eligible to attend in FY 2005.

Seminar Sites and Dates:

Ft. Worth (closer to Roanoke)
 March 22-23, 2005 (T-W)
 Doral Tesoro Hotel and Golf Club
 3300 Championship Pkwy.
 Ft. Worth, Texas 76177
 817/961-0800
 Register by: February 28, 2005

Galveston
 March 30-31, 2005 (W-Th)
 San Luis Resort and Spa
 5222 Seawall Blvd.
 Galveston, Texas 77551
 409/744-1500
 Register by: March 1, 2005

TMCEC Motto!

TMCEC has a motto: *Fair and Impartial Justice for All.* “A motto is a short expression of a guiding principle – we hope that all of our constituency will embrace this principle,” said Hope Lochridge, TMCEC Executive Director. Appreciation is expressed to the two dozen judges and court support personnel that submitted ideas. Judge Robert C. Richter of Missouri City submitted the winning entry.

Made Us Smile!

Among the dozens of mottos submitted to TMCEC, quite a few were insightful and/or humorous. Here are a few:

- *Real Education for Real Judges*
- *With Great Power Comes Great Responsibility*
- *Serving the Courts—Serving Texas*
- *TMCEC—A Class Act*
- *Never Touch the Money*
- *When in Doubt, Call Margaret....*
- *Be Right with Rights*
- *Never Lose Hope*
- *Without Knowledge There is No Justice*
- *Without Justice There is No Freedom*

TMCEC Products Online

TMCEC T-shirts, totes, caps, koozies, books, videos, and ties may be purchased by mail. An order form may be downloaded from the TMCEC website: www.tmcec.com/products.htm.

Looking Back on Last Year

A review of the overall evaluations for last year indicates that the Center's programs were well received by the TMCEC constituency.

TMCEC, however, is always looking for ways to improve its program. If you have questions, comments or suggestions, do not hesitate to call Hope Lochridge, TMCEC Executive Director (800/252-3718).

TMCEC wishes to thank the many faculty members who participated in its FY 2004 program this past year.

Mr. W. Clay Abbott
Honorable Michael Acuna
Honorable Robert Barfield

IMPORTANT! A Call for Questions

TMCEC believes that the best education experiences frequently come from group discussion. Throughout the 2004-2005 academic year, participants will have opportunities to engage in such discussions, but your participation is critical in making such sessions a success.

It is for this reason that TMCEC is asking you to submit question(s) and/or discussion topic(s) that you would like to see addressed. Until June 2005, TMCEC will continuously update submissions and use them in facilitating *Asked and Answer: Q and A Session*. This class will be held as a pre-conference at all 12-hour regional judge and clerk conferences, as well as at the Special Topic: Magistrate Duties seminars.

Even if you cannot attend the pre-conference, you are invited to submit questions. Submissions may be the basis for forthcoming articles in the *Municipal Court Recorder*.

This is your opportunity to directly participate in the dialog of judicial education.

Please submit questions and/or discussion topics:
by fax: 512/435-6118
by email: tmcec@tmcec.com

In the subject line of your message, please state: **A Call for Questions**

Also, feel free to tell us your name and which, if applicable, pre-conference you will be attending.

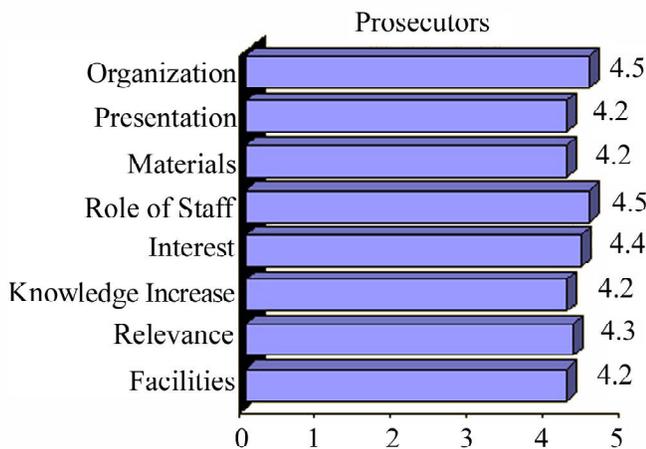
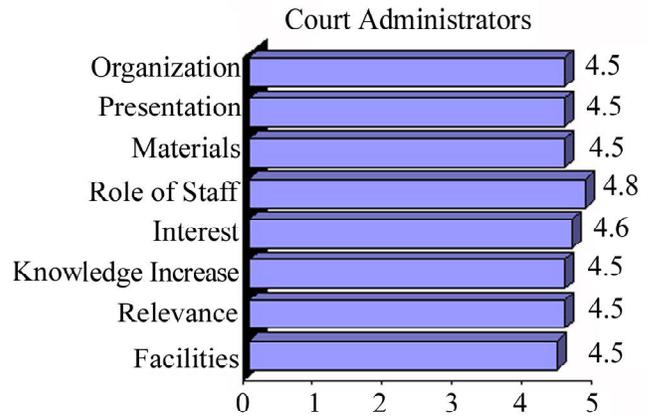
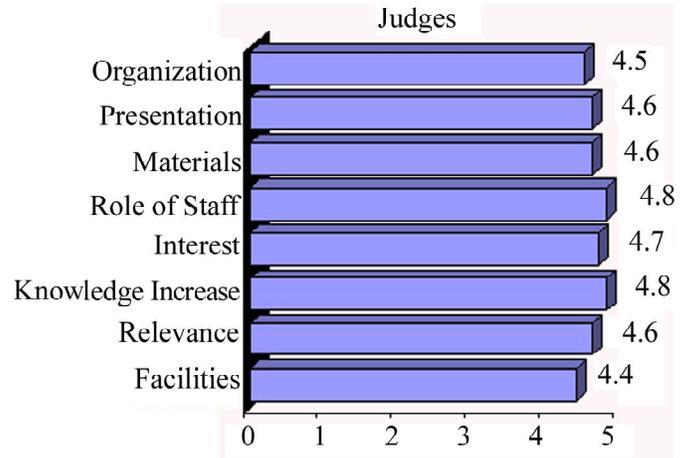
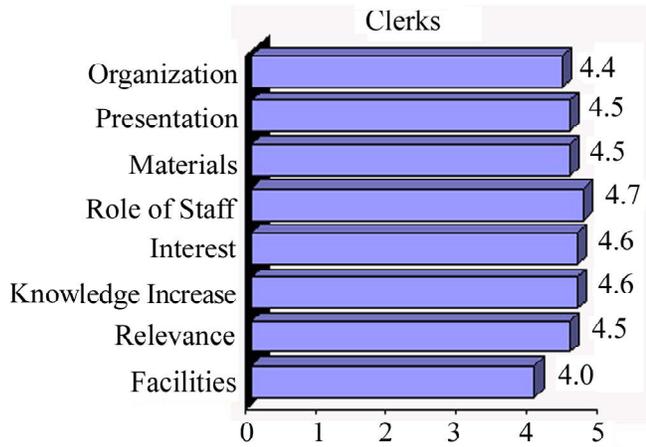
Ms. Jo Dale Bearden
Mr. Thomas Bridges
Mr. Charles Brothers
Honorable Deanna Burnett
Ms. Rita Calvert
Mr. John Calvillo
Ms. Debbie Carter
Honorable Robb Catalano
Ms. Candace Chappell
Ms. Danielle Cruz
Honorable Vikram Deivanayagam
Ms. Angela DeLuca
Mr. Steve Drake
Mr. Russ Duncan
Honorable Gary Ellsworth
Mr. Steven Fagan
Mr. Ross Fischer
Ms. Nancy Flores
Ms. Ann Foster
Honorable Linda Frank
Ms. Susie Garcia
Ms. Carol Gauntt
Honorable Allen Gilbert
Ms. Tracie Glaeser
Honorable Bonnie Goldstein
Ms. Jackie Habersham
Ms. Mary Hawkins
Ms. Lisa Hayes

Mr. Rene Henry
Honorable Brian Holman
Mr. Christian Hubner
Honorable Vonciel Hill Jones
Honorable Stanley Kerr
Mr. Andy Kerstens
Honorable C. Victor Lander
Mr. James Lehman
Dr. Richard Lewis
Ms. Hope Lochridge
Ms. Christine Long
Mr. Jason Lorance
Ms. Vicky Madaras
Honorable Jan Matthews
Mr. Garry McDaniel
Mr. Don McKinley
Mr. Robert Miklos
Honorable Stewart Milner
Mr. David Mudd
Mr. Mark Muellerweiss
Ms. Patricia Nasworthy
Honorable Katherine Peake
Ms. Hilda Phariss
Ms. Kimberly Piechowiak
Dr. Brian Polansky
Honorable Robin Ramsay
Professor Geary Reamey
Ms. Susan Richmond
Honorable Robert C. Ritcher

Ms. Margaret Robbins
Honorable Gary Schroeder
Ms. Susie Seitzler
Mr. M. Michael Sharlot
Mr. Greg Sisco
Honorable Robin Smith
Ms. Judy Spalding
Honorable Edward Spillane, III
Ms. Rebecca Stark
Ms. Krystal Strong
Ms. Jennifer Sullivan
Ms. Zindia Thomas
Honorable Lowell Thompson
Mr. A.J. Torres
Mr. Gerry Tucker
Mr. Ryan K. Turner
Honorable Joseph Varela
Honorable John Vasquez
Ms. Diana Vaughn
Mr. Mark Warren
Mr. Alan Wayland
Honorable Denn Whalen
Mr. Ron White
Ms. Seana Willing
Honorable Edward Winfrey
Mr. Ted Wood
Mr. Tony Wooley
Mr. John Young

TMCEC 2003-2004 Program Evaluation

SCALE	
1	Poor
2	Fair
3	Adequate
4	Good
5	Excellent



Low Volume Courts Series for Judges & Clerks

Since 1999, TMCEC has offered a series of continuing judicial education programs for non-attorney judges and their clerks. Known as the *Low Volume Court Program*, these seminars offer an opportunity for judges and clerks to collectively examine issues and problems commonly experienced in smaller courts.

Enrollment is limited to 40 at these sessions so that there can be more involvement by attendees. So come prepared to participate. Just as with the TMCEC Regional 12-hour Programs, the Low Volume Court program begins at 8:00 a.m. on Day 1 and ends at 12:00 noon on Day 2. Please use the registration form on page 25 in this newsletter.

GALVESTON

November 2-3, 2004
Victorian Hotel & Conference Center
6300 Seawall Boulevard
Zip Code: 77551 409/740-3555
Call TMCEC to Register

HORSESHOE BAY

January 12-13, 2005
Marriott Horseshoe Bay
200 Hi Circle North
Zip Code: 78657 830/598-8600
Register By: December 17, 2004

POTTSBORO

February 15-16, 2004
Tanglewood Resort
290 Tanglewood Circle
Zip Code: 75076 903/786-2968
Register By: January 20, 2005

NOTES:

- These seminars are for non-attorney judges and clerks who have previously completed the first year's training. They do not offer MCLE credit to attorney judges.
- Judges and clerks who attended this program in FY03 or FY04 cannot attend in FY05.
- Enrollment is limited to 40 participants for each seminar providing ample opportunity for questions and answers.
- On-site seminar registration begins at 7:00 a.m. on Day 1; there are no pre-conferences scheduled.

TMCEC FY04 PROGRAM AUDIOTAPES

The following are audiotape recordings from TMCEC's *El Paso Regional 12-Hour Judges and Clerks Programs*. Duplicates are available through the Center at no charge; one set per court.



JUDGES PROGRAM:

- *HB 2319's New Youth Accountability Measures* — W. Clay Abbott, General Counsel, TMCEC
- *Judicial Ethics* — Robin A. Ramsay, Presiding Judge, Denton
- *Case Law Update & Attorney General Opinions* — Ryan K. Turner, Program Attorney and Deputy Counsel, TMCEC
- *Role of the Prosecutor in Municipal Court* — Robert Barfield, Municipal Judge, Pasadena
- *Legal Issues Pertaining to Foreign Nationals* — John Vasquez, Municipal Judge, Austin
- *Warrants* — Tom Bridges, Prosecutor, Portland
- *Magistrate's Overview of Property Hearings* — Jan Matthews, Municipal Judge, Lubbock
- *Open Records: Rule 12 & Common Law Rights of Inspection* — Ted Wood, Special Counsel for Trial Courts, Office of Court Administration, Austin
- *JNA Workshop: Youth Accountability* — Ryan K. Turner, Program Attorney and Deputy Counsel, TMCEC
- *Taking the Difficult Plea in Stride* — Denn Whalen, Municipal Judge, Odessa
- *Professional Responsibility and Judicial Wellness* — Greg S. Sisco, Program Attorney, Texas Lawyers and Judges Assistance Program, State Bar of Texas, Austin
- *Setting Bonds* — Katherine Peake, Presiding Judge, Fredericksburg
- *Community Service Laws in Texas* — Deanna Burnett, Municipal Judge, Carrollton
- *Appeals: Procedure, Problems & Protocol* — Stewart W. Milner, Municipal Judge, Arlington
- *Driver's License Offenses & Related Law* — W. Clay Abbott, General Counsel, TMCEC

CLERKS PROGRAM:

- *Ethics* — Margaret Robbins, Program Director, TMCEC
- *DSC/Deferred* — W. Clay Abbott, General Counsel, TMCEC
- *Overview of Processing Cases* — Margaret Robbins, Program Director, TMCEC
- *Court Security* — Jo Dale Bearden, Program Coordinator, TMCEC
- *Financial Management* — Rene Henry, Collections Projects Manager, Research & Court Services Section, Office of Court Administration, Austin
- *Youth Accountability* — Tracie Glaeser, CMCC, Court Administrator, Round Rock
- *Paperless Court 101* — Jo Dale Bearden, Program Coordinator, TMCEC

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

Name: _____
 Title: _____
 Court: _____
 Address: _____
 City, State, Zip Code: _____
 Telephone Number: _____
 E-mail Address: _____

PLEASE BE ADVISED that the Galveston Low Volume program begins on Election Day, November 2nd. TMCEC encourages judges and clerks attending in Galveston to participate in early voting.

- Early voting lasts from October 18-29.
- Mail ballots may be requested from September 3-October 26.
- Last day to register to vote was October 4.

Back by popular demand... Live and Interactive Web-Based Training Seminars

Texas Municipal Courts Education Center is proud to present its fall set of Webinar Training Programs. *Webinar* is short for Web-based seminar, a training session that is transmitted over the World Wide Web. Webinars are just like conference room-based seminars; however, participants view the presentation through their Web browser and listen to the audio through their telephone.

Haven't attended a Webinar yet? Here is what previous attendees had to say:

- *Great refresher; nice for small courts.*
- *Enjoyed Webinar more than I expected.*
- *Very informative hour.*
- *It's nice not to leave the comfort of the court.*
- *Great way to get your [clerks] training in.*



The fall Webinars will be held on Fridays from 10:30–11:30 a.m. (See listing of dates and topics below.) Participants will need a computer, an Internet connection and a telephone line for the teleconferencing. All levels of computer users are encouraged to attend. Upon registration, you will receive more instructions on how to participate. **There is no charge to participate.**

Webinars do **not** fulfill the mandatory requirements for judicial education for judges. Participation **does** count towards continuing education for the clerk's certification program. MCLE credit will be applied for with the State Bar of Texas.

WEBINAR REGISTRATION FORM

Primary User's Name (please print legibly): _____ Title: _____

Court Represented: _____

Primary Email Address (used for log-in): _____

Office Telephone #: _____ Court #: _____ FAX: _____

List those participants who will be watching on your computer (if applicable):

Name

Title

<i>Name</i>	<i>Title</i>
_____	_____
_____	_____
_____	_____
_____	_____

Seminar Dates You Will Be Participating (check all that apply):

October 29, 2004
Bond Forfeitures 

November 19, 2004
Family Violence 

December 17, 2004
Diversity 

I certify that I am currently serving as municipal judge, city prosecutor or court support personnel in the State of Texas.

Participant Signature _____

Date _____



2004-2005 TMCEC Academic Schedule At-A-Glance



Conference:	Date(s):	City:	Hotel Information:
12-Hour Low Volume Seminar	November 2-3, 2004	Galveston	The Victorian Condo Hotel 6300 Seawall Blvd., Galveston, TX
12-Hour Regional Judges and Clerks Conferences	November 16-17, 2004	Austin	Hilton Austin Airport 9515 New Airport Drive, Austin, TX
Court Administrators: Special Topic Seminar <i>(enrollment limited)</i>	December 1-3, 2004	Austin	Radisson Hotel & Suites 111 East Cesar Chavez, Austin, TX
32-Hour New Judges and Clerks Conferences	December 6-10, 2004	Austin	Omni Hotel Southpark 4140 Governor's Row, Austin, TX
12-Hour Low Volume Seminar	January 12-13, 2005	Horseshoe Bay	Horseshoe Bay Resort Marriott Hotel Hi Circle North, Horseshoe Bay, TX
12-Hour Regional Judges and Clerks Conferences	January 26-27, 2005	San Antonio	Omni San Antonio 9821 Colonnade Blvd., San Antonio, TX
12-Hour Regional Judges and Clerks Conferences	February 3-4, 2005	Houston	JW Marriott Hotel 5150 Westheimer Road, Houston, TX
12-Hour Low Volume Seminar	February 15-16, 2005	Pottsboro	Tanglewood Resort 290 Tanglewood Circle, Pottsboro, TX
12-Hour Court Administrators and Prosecutors Conferences	February 23-24, 2005	Austin	Omni Hotel Southpark 4140 Governor's Row, Austin, TX
Level III Assessment Clinic <i>(required for the Municipal Court Clerk Certification Program)</i>	Feb. 28 - March 2, 2005	Austin	Vintage Villas 4209 Eck Lane, Austin, TX
12-Hour Regional Judges and Clerks Conferences	March 8-9, 2005	Dallas	Westin Park Central 12720 Merit Drive, Dallas, TX
12-Hour Bailiffs/Warrant Officers Conference and 12-Hour Judges Special Topic Seminar - Magistrates	March 22-23, 2005	Ft. Worth	Doral Tesoro Hotel & Golf Club 3300 Championship Pkwy., Fort Worth, TX
12-Hour Judges Special Topic Seminar - Magistrates	March 30-31, 2005	Galveston	San Luis Resort and Spa 5222 Seawall Blvd., Galveston TX
12-Hour Regional Clerks Conference	April 7-8, 2005	S. Padre Island	Radisson Resort South Padre Island 500 Padre Blvd., South Padre Island, TX
12-Hour Regional Judges Conference (Attorneys)	April 11-12, 2005	S. Padre Island	Radisson Resort South Padre Island 500 Padre Blvd., South Padre Island, TX
12-Hour Regional Judges Conference (Non-Attorneys)	April 13-14, 2005	S. Padre Island	Radisson Resort South Padre Island 500 Padre Blvd., South Padre Island, TX
12-Hour Prosecutors Conference	April 18-19, 2005	S. Padre Island	Radisson Resort South Padre Island 500 Padre Blvd., South Padre Island, TX
12-Hour Regional Judges and Clerks Conferences	May 5-6, 2005	Amarillo	Ambassador Hotel 3100 I-40 West, Amarillo, TX
Level III Assessment Clinic <i>(required for the Municipal Court Clerk Certification Program)</i>	May 13-15, 2005	New Braunfels	T Bar M Ranch 2549 Hwy. 46 West, New Braunfels, TX
12-Hour Regional Judges and Clerks Conferences	June 8-9, 2005	Odessa	MCM Elegante 5200 E. University Blvd., Odessa, TX
12-Hour Bailiffs/Warrant Officers and Court Administrators Conferences	June 20-21, 2005	San Antonio	Omni San Antonio 9821 Colonnade Blvd., San Antonio, TX
32-Hour New Judges and Clerks Conferences	July 18-22, 2005	Austin	Omni Hotel Southpark 4140 Governor's Row, Austin, TX
2005 Legislative Updates	August 8, 2005	Houston	Omni Houston Hotel Westside
	August 11, 2005	Lubbock	Holiday Inn Towers
	August 16, 2005	Austin	Hyatt Regency Austin

**TEXAS MUNICIPAL COURTS EDUCATION CENTER
2004-2005 Registration Form**

Seminar Date: _____ **Seminar Site:** _____

Type of Program: Judge Clerk Court Administrator Prosecutor Bailiff/Warrant Officer*
 Legislative Update (\$50 program fee) Assessment Clinic (\$100 program fee)

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

Last Name: _____	First Name: _____	MI: _____
Names also known by: _____		Male/Female: _____
Position Held: _____		
Date Appointed/Elected/Hired: _____		Years Experience: _____
Emergency Contact: _____		

HOUSING INFORMATION

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

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

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

COURT MAILING ADDRESS

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

Municipal Court of: _____ Court Mailing Address: _____ Zip: _____

Office Telephone: _____ Court Telephone: _____ FAX: _____

Primary City Served: _____ Other Cities Served: _____

E-mail: _____

- Status: Attorney Non-Attorney Full-Time Part-Time
 Presiding Judge Associate/Alternate Judge Justice of the Peace Mayor
 Court Clerk Deputy Clerk Court Administrator Prosecutor
 Bailiff/Warrant Officer* Other: _____

*Bailiffs/Warrant Officers: Municipal judge's signature required to attend Bailiffs/Warrant Officers program.	
Judge's Signature _____	Date _____
Municipal Court of _____	

I certify that I am currently serving as 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. I will cancel by calling the Center. If I must cancel the day before the seminar due to an emergency, I will call the TMCEC registration desk at the seminar site. If I am a "no show," TMCEC reserves the right to invoice me or my city for meal expenses, course materials, and possibly housing (\$80 plus tax per night). If I have requested a room, I certify that I live at least 30 miles or 30 minutes driving time from the seminar site. Payment is required ONLY for the Assessment Clinics (\$100) and the Legislative Updates (\$50); payment is due with registration form. Participants in the Assessment Clinics must cancel in writing two weeks prior to seminar to receive refund.

Participant's Signature _____ Date _____

Return form to:

TMCEC * 1609 Shoal Creek Blvd., Suite 302 * Austin, TX 78701 * or send by FAX 512/435-6118

20th Anniversary of TMCEC

On September 10, 2004, TMCEC celebrated the 20th Anniversary of the founding of the Texas Municipal Courts Education Center. The celebration was held at the Doral Tesoro Hotel outside Fort Worth in conjunction with the Annual Meeting of the Texas Municipal Courts Association. Approximately 40 participants were present at the “live” program, as well as another 85 court personnel who tuned into the program via the Internet and TMCEC Webinar.

In each issue of *The Recorder* this year, we will highlight some aspect of TMCEC and Texas municipal courts from the last 20 years. We will look at where we came from, where we’ve been, and will try to predict where we are going.

Please add your comments on TMCEC and our courts by responding to the questions shown on page 28 or by writing us a letter using your own format. You may submit your answers by letter addressed to TMCEC, Attn: Hope Lochridge, 1609 Shoal Creek Blvd., Suite 302, Austin, Texas 78701 or email (hope@tmcec.com). Judge Henry Baldwin of Venus submitted the letter reprinted on page 27 of this newsletter. Thank you, Judge Baldwin!

Significant Years in TMCEC History

- 1975 Articles of Incorporation filed with the Secretary of State’s Office founding the Gulf Coast Association of Municipal Judges.
- 1975-1983 TMCA offered seminars with assistance from federal funds at the Law Enforcement Center at Sam Houston State University in Huntsville.
- 1977 Name changed to Texas Municipal Courts Association (TMCA).
- 1983 Legislature mandated training for municipal judges (effective 1-1-84).
- 1984 Legislation passed providing 50¢ court cost for education of municipal judges.
- 1984 TMCA applied for grant funds from Governor’s Office and filed Articles of Incorporation for the Texas Municipal Courts Training Center (TMCTC).
- 1984 First TMCTC seminar held in Amarillo with state funding from the 50¢ court cost (September).
- 1985 The 69th Legislature passed House Bill that 1) created a Judicial Court Personnel Training Fund to be administered by the Supreme Court; 2) provided for the continuing legal education of judges of courts at all levels and their court support personnel; and 3) provided a means for funding judicial education through court costs and appellate fees. The first court cost was \$1 on all criminal offenses.
- 1993 Funding for and supervision of training centers moved from under Texas Supreme Court to Texas Court of Criminal Appeals.
- 1993 TMCTC changed name to TMCEC to emphasize professional education.
- 1996 Clerks Certification program funded by the State Justice Institute.
- 1996 TMCEC launched website, providing 24/7 access to judicial education resources.
- 2000 25th Anniversary of TMCA.
- 2001 Court costs for Judicial Court Personnel Training Fund increased to \$2.
- 2003 TMCA initiated TMCA Building Fund to give TMCEC a permanent headquarters in Austin.
- 2004 ***TMCEC celebrates its 20th Anniversary!***

Hope Lochridge
Texas Municipal Courts Education Center
1609 Shoal Creek Boulevard, Suite 302
Austin, Texas 78701

September 2, 2004

Dear Hope,

As you know, there are a few of us that have been around since the “Dark Ages” of the Corporation Court. I will complete 34 continuous years on the bench this October and can say without hesitation that there have been tremendous changes over those years. When I first took office, I was given a very small peace officers handbook by the local constable. This book contained the forerunner to the penal code. I also had a small book on traffic laws and these two books constituted my law library. The only other resource that I received periodically was a crime prevention newsletter published by the Attorney General’s Office, which contained summaries of AG Opinions, Court of Criminal Appeals decisions, and significant Federal appellate court decisions. It did not take a lot of time back then to read every issue from cover to cover, which was most helpful in learning how to avoid mistakes made by other magistrates, particularly in search and seizure.

And then there was a wonderful sunrise over the Texas coast which was called the Gulf Coast Municipal Judges Association. How I wished that someday this group would expand from Harris and Galveston Counties to include us Northerners in Tarrant County. When this group started having training at their meetings in Huntsville, it presented my first opportunity to participate in any kind of a real learning experience dealing with my job as judge. I applaud the actions of this group of judges and prosecutors, several of whom are still around, because, where we are today is largely the result of their early efforts.

Unless one has experienced the time when absolutely no training was available for municipal court judges, I do not believe one can really appreciate the important role TMCEC plays today. I have experienced trying to faithfully execute my duties with nowhere to turn for advice or guidance, through the era of permissive training, to the mandated training of today. While I recognize that not all of my colleagues share my enthusiasm for attending the annual sessions, I can only challenge them to imagine trying to operate in today’s environment if they had only a small, paperback peace officers guide and a small book on traffic laws. The point I wish to make is that our environment is much more complex today than it was 20 or 30 years ago and the consequences of mistakes today are far greater than in those “Dark Ages.”

While there may be many metrics to describe the changes that I have seen over the years, one comes to mind that possibly has not been mentioned by others. It is what I call the “We don’t do it that way in my court” factor. When I first started attending the TMCEC training sessions, I was amused, and sometime annoyed, at participants who would argue with the speaker on some point of a process they were using and could not be convinced that their method was contrary to the law. The discussion would typically conclude with: “We don’t do it that way in my court.” End of discussion! I am happy to say that I now see almost none of this factor raising its head in today’s training sessions. I believe this is an indirect measure of the gradual upgrade of professionalism which has taken place over the years in the ranks of all personnel associated with municipal courts. TMCEC is to be congratulated for being a major factor in affecting this important change.

Hope, I may not have addressed all of the questions that you posed in your letter, but I have attempted to briefly contrast the “Dark Ages” with today’s opportunities for becoming better judges, clerks, bailiffs and prosecutors. For the future, I would encourage those who will follow in our footsteps to cherish the opportunity for training that will address even more complex topics as time passes. Do not take this opportunity for granted — it has not always been there. The key word here is “opportunity” — opportunity to teach, to learn, and to improve.

Sincerely,

Henry A. Baldwin
Municipal Court Judge
Venus, Cross Timber, Enchanted Oaks
(Retired from Crowley)

Survey Questions for 20th Anniversary

1. How has your municipal court changed most in the last 20 years?
2. In what other ways has the court changed in the last 20 years?
3. How have your views, the city council's views, or the community's view of the court changed in the last 20 years?
4. Comment on ways that the Education Center has been helpful in your work.



Hope Lochridge presents W. Clay Abbott a plaque proclaiming TMCEC's appreciation for excellent service dedicated to the Center's mission for the past five years. Clockwise from top left: Carrie Harper, Lidia Ball, Beatrice Flores, Patricia Russo, Jo Dale Bearden, Margaret Danforth, Rey Guzman, Ryan K. Turner, Hope Lochridge, W. Clay Abbott, and Margaret Robbins.

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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