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Establishing the Identity of Foreign Nationals

By John Vasquez, Municipal Judge, Austin

We all have names and dates of birth. And when individuals appear before the courts, we identify defendants most often by name and date of birth. But how do we identify individuals who lack a state issued driver's license or identification card? How are persons with the similar names (a common occurrence) and different birth dates reliably identified by the courts. As judges, we believe in accountability, but we do not want the wrong person held responsible for the conduct of another simply because they have similar names.

Driver's licenses and state issued identification cards are the most reliable

ways to determine identity. These cards are issued by the governments of each state of the Union. Cash a check or use a credit card and you are asked to present you driver's license. But how do courts establish the identity of individuals who are not eligible for state issued driver's licenses and identification cards?

Several years ago, states were required to collect social security numbers when issuing driver's license and identification cards. This requirement was imposed to improve the collection of child support from delinquent parents. An unintended effect of this requirement

was to make possession of a social security card the litmus test for obtaining a driver's license. No social security number equaled no driver's license. The group that was most affected by this requirement were Mexican nationals working in the United States without legal documentation. Before the rule change, undocumented workers were able to obtain a driver's license (and purchase auto insurance). After the rule change, they were unable to qualify for driver's licenses. Identification suddenly became a much more difficult matter as a consequence.

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Magistrates, Jurisdiction and Open Courts

By W. Clay Abbott, General Counsel, TMCEC

The hungry judges soon the sentence sign, And wretches hang that jurymen may dine. -- Alexander Pope, *Rape of Lock* (canto III, l. 21)

In response to a statewide systemic weakness in jail processing and appointment of counsel, the Texas Legislature passed sweeping revisions to the process of bringing arrestees before a magistrate and appointing counsel. Horror stories abounded of lost prisoners and unconscionable delays. Expediency became the battle cry in attempts to improve local jail magistrate systems. As the reform

campaign that began in 2001 matures, it may be time to review some basic structures that have suffered collateral damage in the well-meant push for expediency. These collateral targets include: the distinction between magistrate and judicial functions, the concept of jurisdiction, and the statutory and constitutional guarantees of open courts.

At TMCEC schools, on the 800 line and via email, stories pour in from all over Texas of magistrates acting like judges, JPs and municipal judges racing to the

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AROUND THE STATE

Fall Conferences

Mark your calendars! There are several excellent conferences scheduled for this fall. The websites of each association contain more information about the program and registration information.

Annual Meeting of the Texas Municipal Courts Association
September 9 - 11, 2004
Doral Tesoro Hotel and Golf Club, Fort Worth
www.txmca.com

Annual Conference of the Texas Court Clerks Association
October 4 - 6, 2004
Capitol Marriott, Austin
www.texasclerkclerks.org

2004 Texas Teen Court Conference
November 3 - 5, 2004
Clarion Hotel, Fort Worth
www.texasteencourt.com

TMCEC Webinar

TMCEC is piloting a new, innovative web-based training program this summer. Each Friday for 10 weeks, a one-hour program will be offered via the telephone and the Internet. Participants will listen to members of TMCEC's highly rated faculty via the telephone (a toll-free call) and watch the corresponding PowerPoint presentation on computer screens from their office, court or home. There is no charge to participate. The programs are designed for judges, clerks and prosecutors. Several will also appeal to bailiffs/warrant officers. A registration form, additional information and a list of scheduled speakers are found on page 10 of this newsletter. The program will offer MCLE credit and credit towards clerk certification, but is not approved to fulfill the mandatory requirements for judicial education of municipal judges, nor will it be submitted for TCLEOSE credit.

TMCA Annual Awards

Each year, the Texas Municipal Courts Association (TMCA) presents an outstanding municipal judge and court support person with awards for exemplary service to the fair and impartial administration of justice. Winners will receive a plaque, two tickets to the awards ceremony, registration to the TMCA Annual Meeting in September (see above) and one night's stay at the host hotel (Doral Tesoro in Fort Worth). The deadline to submit candidates for these two awards is July 16, 2004 and winners will be notified in August. For more information, contact: TMCA Awards Committee, P.O. Box 2000, Lubbock, TX 79457, jmatthews@mail.ci.lubbock.tx.us or 806/775-2462.

jail to take pleas, magistrates overruling legal decisions of judges and general pandemonium. In such situations, it may be best to return to the basics.

Magistrate v. Judicial Functions

Every Texas judge is a Texas magistrate. Art. 2.09, Code of Criminal Procedure. This includes all municipal judges. Municipal judges are often assigned increasingly considerable magistrate duties. This is a result of the ease in creating municipal judicial positions and the new demand for magistrates created by the Fair Defense Act and its demand for faster magistration of arrestees.

In that many magistrates are also judges of courts of limited jurisdiction, these magistrates often switch between court and magistrate functions in the same setting. This results in what have been called “jail pleas.”

In cases of on-view warrantless arrest, the magistrate’s duty under Federal Constitutional law is to determine whether probable cause exists to continue pre-charging detention of the arrested. See *Gerstein v. Pugh*, 420 U.S. 103 (1975), and *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991). This duty does not apply to individuals arrested under warrants, *capias* warrants or *capias pro fine* warrants. With warrants, probable cause is established from an affidavit presented to the magistrate. In the case of *capias* warrants, the issue of probable cause is established by the existence of a charging instrument filed in a court with jurisdiction of the case. Finally, with *capias pro fine* warrants, probable cause is surpassed by a judgment and sentence in the underlying criminal case. Where a judge or magistrate issues a warrant of any kind, the issue of probable cause has been resolved prior to arrest and the appearance magistrate is not given any appellate, supervisory or review functions, short of holding an examining trial under Chapter 16 of the

Code of Criminal Procedure.

The magistrate’s obligation to all arrested defendants is contained in Art. 15.17, Code of Criminal Procedure. Defendants arrested under warrants must also be taken in front of magistrates pursuant to Art. 14.06, Code of Criminal Procedure. Generally, the magistrate’s duties include giving warnings, setting bond and appointing counsel or assisting the defendant in applying for appointment of counsel.

In fine-only misdemeanor cases, Art. 15.17(b), Code of Criminal Procedure, allows the magistrate to release the defendant without bail with a written order from the magistrate to appear in an appropriate court at a specific time and place. The magistrate still has the authority to have the defendant post a surety or cash bond or to post a personal bond.

In 2001, a most extraordinary power was given to the appearance magistrate by the Legislature in Art. 15.19, Code of Criminal Procedure. If a person was arrested on a warrant for a fine-only offense issued outside of the county of arrest, the appearance magistrate was given the authority of a judge to accept a plea and enter judgment in the case. This authority was novel. This new power also shelved a centuries old structure of jurisdiction. Any magistrate of any county has many of the powers of the judge of any municipal court or justice court in the State without appointment, election or accountability. Needless to say, there have been challenges in adjusting to this new legislative creation. A tremendous blurring of the lines between judges and magistrates was created in order to serve the call of expedience and jail population reduction. Some wrongfully applied this new concept outside of its boundaries, and the creation of the super magistrate was born. Nothing in Art. 15.19, Code of Criminal Procedure, or elsewhere in the law

gives a magistrate jurisdiction of on-view fine-only misdemeanor cases or jurisdiction of cases where warrants are served in the same county from which they are issued.

Taking a plea on a case and imposing judgment remains a judicial function of the judge of the court in which an action is pending. Giving jail credit and assessing a fine are strictly judicial powers, not magistrate powers. To act with judicial authority over a case, the judge must have jurisdiction. To act with magisterial authority, the magistrate must have jurisdiction.

Magistrate functions differ from judicial functions in two profound regards. Magistrate functions are typically nonadversarial or *ex parte*. Magistrate functions are also typically temporary or emergency in nature. Magistrates do serve the justice of expediency. Judicial functions are adjudicative, judging between adverse parties and typically final dispositions of matters.

The provisions of Art. 27.14, Code of Criminal Procedure, complicate judicial functions in municipal and justice courts. Only in fine-only misdemeanors may a court hear and adjudicate a case by mail and with only one party before the court. This provision allows the payment of an acceptable fine to constitute a plea, waivers, *ex parte* adjudication, and sentencing. In addition, it allows the plea to be to a “written notice of charges” or citation as opposed to the formal charging instrument or complaint. (See Ryan Turner’s article in this publication for more on complaints.) This expedient and informal means of disposing of the great mass of cases in municipal and justice courts may further blur the lines between magistrate and judicial functions.

Functions that must be conducted by a judge with jurisdiction over the case or when the defendant is arrested on an out-of-county warrant and the

magistrate acts in strict compliance with Article 15.19, C.C.P., includes accepting pleas, setting fines, convicting or acquitting defendants, ordering dismissals, granting jail credit, accepting payment of fines, determining cost, granting extensions or payment plans, conducting sentencing hearings and entering judgments. Magistrates may release defendants on bond or without bond to reappear, but do not make final disposition of cases. Jail credit and time served orders can be made only with sentencing, after the defendant is found guilty, by a judge with jurisdiction.

The need to move people out of jail with expediency has blurred the lines between judges and magistrates, but it is essential to the law and jail procedures that they be recognized. The jail magistrate does not have the general legal authority to perform the functions of a municipal judge or justice of the peace—positions they do not hold. In some instances, the magistrate is also the judge or justice with jurisdiction over the case; then that magistrate can act separately in both capacities. It is still important to differentiate, as we will see in the next two sections.

Jurisdiction

Black's Law Dictionary spends three pages defining jurisdiction. Countless hours are spent in law schools and courts trying to nail down exactly what it means. Two concepts of jurisdiction are important to our topic at hand. Jurisdiction is the power of the court to exercise authority in a particular case. Jurisdiction also refers to the subject and geographic limitations on cases appropriate to a particular court.

The jurisdiction of municipal courts is set forth in Art. 4.14, Code of Criminal Procedure. The jurisdiction of the municipal court is limited by both geography and subject matter. The municipal court is also granted two kinds of jurisdiction: exclusive original

jurisdiction and concurrent jurisdiction with justice courts. The municipal court has exclusive original jurisdiction of municipal ordinance violations punishable by fines not to exceed \$500 or \$2,000 for zoning, health or safety violations. These cases must be filed in the municipal court of the municipality creating the ordinance. Original jurisdiction means the case must start in municipal court, but is appealed to another court. Municipal courts also have concurrent jurisdiction with justice courts of all state law criminal violations that are “fine-only.” Art. 4.16, Code of Criminal Procedure, controls the application of concurrent jurisdiction. Municipal court jurisdiction is geographically limited to offenses committed in the territorial limits of the municipality.

Jurisdiction vests, or becomes exclusive, in the court with concurrent jurisdiction in which the complaint is first filed. This also brings up another aspect of jurisdiction. The court has jurisdiction over cases filed in the court. Criminal charges are generally created by the complaint. Art. 27.14(d), Code of Criminal Procedure, allows a citation—specifically referred to as a “written notice of an offense”—to serve as a complaint. But that section requires that the citation be filed with the court. Therefore, the citation or complaint must be filed for any court to have exclusive or concurrent jurisdiction. Stated differently, justice and municipal courts have jurisdiction over certain criminal cases; cases don't exist without a filed complaint or citation. Thus, for an on-view warrantless arrest, no court and no magistrate has jurisdiction of the case to accept a plea and enter a judgment until a complaint is filed in an appropriate court.

A magistrate's jurisdiction to perform an initial appearance under Art. 15.17, Code of Criminal Procedure, is also limited. The magistrate must be “some magistrate of the county where the accused was arrested.” A limited

exception to this requirement is made for magistrates of bordering counties when it is necessary to protect the rights of the defendant. Secondly, Art. 15.17, Code of Criminal Procedure, places the duty on the officer making the arrest or holding the defendant to take the defendant before some magistrate. No magistrate has jurisdiction under 15.17 until a defendant is brought before them. That magistrate alone then maintains jurisdiction for purposes of bond amount, holding examining trials and other temporary detention issues until a charging instrument is filed in an appropriate court with jurisdiction of the offense. No other magistrate may intervene and enter new orders. See *Guerra v. Garza*, 987 S.W.2d 593 (Tex. Crim. App. 1999). Jurisdiction of the detainee/defendant may also be created by a writ of *habeas corpus* filed in a district court under Chapter 11 of the Code of Criminal Procedure. Magistrate's bond and detention decisions are not reviewable on direct appeal, but can be reviewed by writ of *habeas corpus*.

When a defendant in custody under a warrant or *capias* issued by a court with jurisdiction is brought before a magistrate, that magistrate has jurisdiction to engage in more limited magisterial functions. As noted earlier, no determination of probable cause is necessary. The magistrate still sets bond amounts and bond conditions, and may release the fine-only defendant to appear in an appropriate court, but he or she has no continuing obligations or jurisdiction. The magistrate certainly has no supervisory, appellate or superceding powers. This is true regardless of the jurisdictional levels of the relative court or magistrate. The Court of Criminal Appeals judge has no more original jurisdiction over a municipal citation than the municipal judge has jurisdiction over a capital writ. Except in the limited circumstance of the ill conceived Art. 15.19, Code of Criminal

Procedure, the magistrate has no authority to take pleas, assess fines, grant jail credit, dismiss charges or make other final orders.

Capias pro fines create a number of jurisdictional issues. Clearly jurisdiction has been established in a particular court. Equally obvious is the judicial finding of probable cause, since the *capias pro fine* is based on a judgment establishing guilt beyond a reasonable doubt. Art 14.06, Code of Criminal Procedure, might still require that the arresting officer bring the accused before a magistrate for initial appearance warnings. A defendant held on a *capias pro fine* is not entitled to an appearance bond since the need for appearance disappeared with the earlier final judgment of the court. The magistrate gives warnings and then has no further obligations or jurisdiction.

A judge, not a magistrate, must order further detention of a defendant on a *capias pro fine*. The judge issuing the *capias pro fine* must determine that the defendant is not indigent or failed to make a good faith effort to discharge the fine (Art. 45.046, Code of Criminal Procedure) and enter a written order of commitment along with the judgment and sentence to authorize commitment. Nothing in the Code says what happens if the court fails to do this, but the officer holding the defendant has no justification for continued detention. Art. 45.045, Code of Criminal Procedure, allows incarceration before the commitment “until the defendant can be brought before the court.” While a magistrate has no authority to discharge a defendant held on a *capias pro fine*, relief is available by a writ of *habeas corpus*. The indigence or good faith findings required with the commitment protect both the court and jail from violation of the U.S. Constitution and Federal civil rights lawsuits. For more information of the risk of the old “pay or lay” scenario, see *Pay or Lay: Tate v. Short Revisited* by Ryan Kellus Turner in

the March 2003 issue of the *Municipal Court Recorder* (available online at www.tmcec.com/mar03recorder.pdf).

A judge with jurisdiction of the case sometimes performs magistrate functions. The judge/magistrate may then switch back and forth between those functions. The defendant should be informed of the judge’s dual capacity. Only in this event should the notorious “jail plea” then take place. The judge/magistrate should be careful to properly indicate his or her role in all judgments, orders and paperwork. It is also important to note that potential jurisdiction—the fact that a case may, or even most likely will, be filed in a particular court—is not the same as jurisdiction created by the proper filing of a complaint or citation.

Open Courts

Another problem with the jail plea by the judge/magistrate is the requirement that judicial hearings be held in open court. The need for a speedy presentation before the magistrate and the obvious need for security in secure detention facilities makes the area in which the accused is brought before the magistrate anything but open and accessible. That is the whole point of secure detention.

Art. 1.24, Code of Criminal Procedure, states, “The proceedings and trials in all courts shall be public.” If this is not clear enough, Art. 45.041(d), Code of Criminal Procedure, is even clearer. In municipal and justice courts, “All judgments, sentences, and final orders...shall be rendered in open court.” While a defendant informed of this right should be able to waive it, the courts obligation to the media and to the public may still be violated. Clearly, a victim’s rights under the Texas Constitution and Art. 56.02(b), Code of Criminal Procedure, are violated by a “jail plea.” Some courts wisely post directions for requesting attendance or access to jail dockets.

Whether or not this satisfies all of the court’s obligations under the law may remain in question, but this clearly beats the alternative of having no fail-safe procedure.

Jail dockets are rife with problems in addition to distinguishing between magistrate and judicial functions, and providing open court protections. One potential solution may lie in Art. 27.14 (b), Code of Criminal Procedure, that allows a defendant to “mail or deliver in person” a plea and waiver of jury trial. The court then may enter judgment and notify the defendant of the amount of fine or appeal bond. At judgment, the court must give jail credit under Art. 45.041(c), Code of Criminal Procedure.

Conclusion

Expediency creates sloppiness. Arrested persons have the right to be brought before a magistrate—quickly. But, the need to act with actual authority and with proper consideration is also essential. Often, magistrates take on duties abandoned by judges. Judges need to efficiently carry out their duties; magistrates need to limit their actions to those they have jurisdiction to carry out. The temptation to be efficient must be tempered with the resolution to do things right.

Despite the fact that our courts only assess fines as punishment, our impact is enormous. The number of arrest, incarcerations, defendants and victims is unparalleled. The income generated by our local courts is also not insignificant. But mostly, justice and municipal courts—and the correctness of their operation—matter because they impact so many people and because the stand on the front-line against disorder, chaos and the breakdown of a free society. Perhaps Davy Crockett said it best in his autobiography, “Be always sure you are right—then go ahead.” 🗡️

Complaints, Complaints, Complaints:

Don't Let the Language of the Law Confuse You

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

Complaining is good for you as long as you're not complaining to the person you're complaining about. —Lynn Johnston, *For Better or For Worse*

Recently, I heard a radio advertisement for a vocabulary-building product that asserts “people judge you by the words you use.” Well, if this is true, without being too sesquipedalian,¹ it is equally true that people often inadvertently confuse each other with the words they use.

This is especially true where the legislature writes statutes and appellate courts construe them in the form of case law. In at least one instance, the circular cycle of legal construction has made the history books.² Debatably, separation of powers inherently creates an environment in which the legislature and the judiciary go about their respective tasks with minimal safeguards to ensure that one truly understands the words of the other. As anyone who has wrestled with the verbiage of a statute can attest, the smallest word can sometimes be the source of the greatest confusion.

From time to time, TMCEC attempts to shed light on similar but misused words and how their application and context are of legal significance. Past issues of the *Municipal Court Recorder* have addressed the differences between civil “truancy” and criminal “failure to attend school”³ and why “deferred adjudication” is not “deferred disposition.”⁴ Likewise, this article is another installment in the semantic saga of how words used in the criminal justice system can easily be misused, confused and abused.

It all began with a telephone call from a clerk. She called with a legal

question about complaints. What transpired during the course of our one-hour telephone call was as closely akin to Abbott and Costello’s classic “Who is on First” routine as a discussion of Texas law. At the end of our conversation, the clerk commented that TMCEC should write an article on the subject to help minimize confusion. For the unconfused, the problem is that depending on which part of the Code of Criminal Procedure you are reading; the term “complaint” has three distinct meanings. Though it has taken a year to muster up the courage to sort out the meanings, Madam Court Clerk, here is your long distance dedication.

“Noah Webster, meet Henry Black”

Texas law provides that “words and phrases shall be read in context and construed according to rules of grammar and common usage.”⁵ Though the Court of Criminal Appeals has consistently construed to mean that the judiciary must give effect to the “plain meaning” of words,⁶ this unfortunately does not always eliminate confusion. As every high school debater knows, the meaning of a word ultimately depends on which dictionary you are using to define the term. What follows is a classic illustration of what happens when a word (especially a legal term) takes on one too many meanings (*i.e.*, when good legal terms go bad).

New Webster’s Dictionary and Thesaurus of the English Language defines a “complaint” as “an expression of dissatisfaction; an accusation.” Under the subheading “criminal law,” *Black’s Law Dictionary 8th Edition* defines a “complaint” as “a formal charge accusing a person of an offense” (*e.g.*, an indictment or information). *Black’s* also provides a definition of a

“preliminary complaint” as a “complaint issued by a court to obtain jurisdiction over a criminal suspect for a hearing on probable cause or on whether to bind the suspect over for trial.” What was notably deleted in the *8th Edition* but included in the *6th Edition* is the following information:

The complaint can be “taken out” by the victim, the police officer, the district attorney, or other interested party.

Although the complaint charges an offense, an indictment or information may be the formal charging document. The complaint is a written statement of the essential facts constituting the offense charged. In the federal courts, it is to be made upon oath before a magistrate. If it appears from the complaint that probable cause exists that the person named in the complaint committed the alleged crime, a warrant for his arrest will be issued.

Sorting through it All

Not to complain, but the preceding definitions leave a great deal of clarity to be achieved (*i.e.*, they are collectively very confusing). While seasoned users of the Code of Criminal Procedure may already be familiar with its ambiguous use of the

More References

Further questions about the form, contents, sufficiency, or execution of complaints, objections, and responses and rulings on motion to quash may be answered in an excellent paper prepared for municipal prosecutors by the Honorable Joseph Varela, Municipal Judge, City of Houston. You can access that paper on the TMCEC website at www.tmcec.com/Coursemats/Complaints.doc.

word “complaint,” a word of caution is advised to the uninitiated. As explained by George Dix and Robert Dawson, University of Texas Professors of Law, a “discussion of complaints is complicated by the Code’s unfortunate failure to carefully distinguish between the various ways in which this and related terms are used.”⁷

Example One—Application: “I’m going to file a citizen complaint.”

Most of us have heard the term “citizen complaint.” While many cities have established a process for filing such a complaint, it is generally unrelated with criminal procedure. Rather, a citizen complaint is an allegation by a person (typically a resident) of misconduct by either a public official or employee. Rather than being a part of the judicial process, it is generally considered a part of maintaining public relations and the confidence of local citizens.⁸

Example Two—Application: “Do you have a complaint for the warrant?”

Pursuant to Chapter 15 of the Code of Criminal Procedure, which governs arrest warrants, a “complaint” is the affidavit made before the magistrate or district or county attorney if it charges the commission of the offense.⁹ Article 15.05, C.C.P., controls the contents of this complaint and is set out in full in the inset on this page.

One would assume that, if Texas law requires a sworn complaint in the issuance of an arrest warrant, a sworn complaint would also be required for the issuance of a search warrant. Such an assumption, however, would be mistaken. For reasons unknown, Chapter 18 of the Code of Criminal Procedure, which governs search warrants, uses the term “affidavit” rather than “complaint.”¹⁰ Similar to an arrest warrant, a search warrant may only be issued upon a sworn affidavit

stating sufficient facts to justify issuing the warrant.¹¹ In the context of warrants, there is practically no difference between the terms “complaint” and “affidavit.”¹² Perhaps the difference in terminology is because the issuance of a search warrant does not always accompany the allegation of criminal wrongdoing. Of course, a more sardonic explanation is that the Legislature did not want users of the Code of Criminal Procedure to become confused by multiple conflicting uses of the word “complaint.”¹³

Example Three—Application: “Have you given the county attorney a complaint alleging a Class A or B misdemeanor?”

The charging instrument for Class A and B misdemeanors is known as an “information.” “An ‘information’ is a written statement filed and presented in behalf of the State by the district or county attorney charging the defendant with an offense which may by law be so prosecuted.”¹⁴

Depending on its contents, a complaint, described above as the basis for issuing an arrest warrant, may also serve as the basis for an information.¹⁵ Since the promulgation of the first Code of Criminal Procedure in 1854, Texas law has prohibited the issuance of the

information until a “credible person” swears to the criminal charge before the district attorney, county attorney or other person authorized to administer oaths.¹⁶ Here is the rub—the first version of the Code of Criminal Procedure provided that the information could not be presented until “oath” was made by some credible person.¹⁷ Today, Article 21.22 of the Code of Criminal Procedure is titled “Information Based upon Complaint.” The word “oath” no longer appears in the statute. What is odd, however, is that nowhere in the statute is the word “complaint” to be found. If this is a surprise to you, join the crowd. All who have sat for the Texas Bar Exam knows that they are required to know that a complaint is a necessity for an information. Nearly every Texas criminal procedure book written discusses the purposes of requiring a complaint and under what circumstances a complaint can be used in a felony prosecution. Furthermore, the Code Construction Act provides that the heading of statutes are not to be construed as part of the law.¹⁸ Alas, why have we come to associate “complaints” with the issuance of an information? The answer is in case law. By 1889, it appears that the Court of Appeals viewed the words “oath” and “complaint” as interchangeable.

An information cannot be presented until

Art. 15.05. Requisites of Complaint

The complaint shall be sufficient, without regard to form, if it have these substantial requisites:

- | | |
|--|--|
| 1. It must state the name of the accused, if known, and if not known, must give some reasonably definite description of him. | 3. It must state the time and place of the commission of the offense, as definitely as can be done by the affiant. |
| 2. It must show that the accused has committed some offense against the laws of the State, either directly | 4. It must be signed by the affiant by writing his name or affixing his mark. |

or that the affiant has good reason to believe, and does believe, that the accused has committed such offense.

*oath has been made by some credible person, charging the defendant with an offense. This oath is called a "complaint." It is the basis and foundation upon which the information rests, and is a necessary part, and must be filed with the information. Without a complaint, an information would be wholly invalid, and would confer no jurisdiction upon the court, and would be worthless for any purpose.*¹⁹

Example Four—Application: “The complaint is the charging instrument used in prosecuting a Class C misdemeanor in municipal and justice court.”

Under Chapter 45 of the Code of Criminal Procedure, governing the adjudication of criminal cases in municipal and justice courts, a complaint is itself the charging instrument.²⁰ It is important to distinguish application of the term “complaint” from those formally or informally called a complaint previously described in this article. See Article 45.019, C.C.P., in the inset on this page.

A complaint filed in municipal court must allege that the offense was committed in the territorial limits of the municipality in which the complaint is made. The same statute that governs the requisites of a complaint in municipal and justice court also addresses defect and irregularities in the charging instrument.²¹ While it has long been believed that defect in charging instruments under Chapter 45 were handled in the exact same manner as other Texas trial courts, this assumption was recently called into question by one Court of Appeals in *State v. Sanchez*, which is now pending in the Court of Criminal Appeals.²²

Conclusion

Sorting out the laws relating to the legal usage of “complaints” in Texas has unfortunately become as

Art. 45.019. Requisites of Complaint

- (a) A complaint is sufficient, without regard to its form, if it substantially satisfies the following requisites:
 - (1) it must be in writing;
 - (2) it must commence “In the name and by the authority of the State of Texas”;
 - (3) it must state the name of the accused, if known, or if unknown, must include a reasonably definite description of the accused;
 - (4) it must show that the accused has committed an offense against the law of this state, or state that the affiant has good reason to believe and does believe that the accused has committed an offense against the law of this state;
 - (5) it must state the date the offense was committed as definitely as the affiant is able to provide;
 - (6) it must bear the signature or mark of the affiant; and
 - (7) it must conclude with the words “Against the peace and dignity of the State” and, if the offense charged is an offense only under a municipal ordinance, it may also conclude with the words “Contrary to the said ordinance.”
- (b) A complaint filed in justice court must allege that the offense was committed in the county in which the complaint is made.
- (c) A complaint filed in municipal court must allege that the offense was committed in the territorial limits of the municipality in which the complaint is made.
- (d) A complaint may be sworn to before any officer authorized to administer oaths.
- (e) A complaint in municipal court may be sworn to before:
 - (1) the municipal judge;
 - (2) the clerk of the court or a deputy clerk;
 - (3) the city secretary; or
 - (4) the city attorney or a deputy city attorney.
- (f) If the defendant does not object to a defect, error, or irregularity of form or substance in a charging instrument before the date on which the trial on the merits commences, the defendant waives and forfeits the right to object to the defect, error, or irregularity. Nothing in this article prohibits a trial court from requiring that an objection to a charging instrument be made at an earlier time.

complicated as the individual areas of the law in which the term is used. Nevertheless, it is important to distinguish how the term is used (and misused) in Texas law. When discussing complaints, it is recommended that you discuss the subject in the same context. Failure to do so is a common source of confusion. Regardless of your level of familiarity with Texas criminal procedure, this is an area of the law that even the most widely cited legal scholars believe can be precarious. As Dix and Dawson explain, “Care must be taken to avoid confusing case law

dealing with complaints in one context with legal requirement applicable when complaints are relied upon for other purposes. Some overlaps in the requirement undoubtedly exist, but the law applicable is nevertheless different and distinguishable.”²³

¹ Sesquipedalian \ses-kwi-pi-DAYL-yun\, *adjective*: 1. Given to the overuse of long words; “sesquipedalian orators.” 2. (Of words) long and ponderous; having many syllables; as “sesquipedalian technical terms.” Please do not judge me too harshly. It has been 14 years since my late father taught me this word, and I

have patiently been waiting for an opportunity to use it in a sentence.

² E.g., see generally, George E. Shelley, “The Semicolon Court of Texas,” *Southwestern Historical Quarterly* 48 (1945).

³ Vol. 9 No. 3. at 5.

⁴ Vol.11 No. 2 at 13.

⁵ Section 311.011(a), Government Code.

⁶ *State v. Hardy*, 963 S.W.2d 516 (Tex. Crim. App.1997).

⁷ 41 *Criminal Practice and Procedure*, Section 19.01 (Texas Practice 2d ed 1999).

⁸ Ironically, Article 18.16 of the Code of Criminal Procedure does implicitly acknowledge what is commonly referred to as “citizen arrest.”

⁹ Article 15.04, Code of Criminal Procedure.

¹⁰ Article 18.01, Code of Criminal Procedure.

¹¹ Article 18.01(b), Code of Criminal Procedure.

¹² Such an “affidavit is not formally designated a ‘complaint,’ but it may be so labeled as a matter of informal practice.”

Supra, note 7 at 474.

¹³ In the vernacular of today’s youth, “yeah, sure, whatever.”

¹⁴ Article 21.20, Code of Criminal Procedure.

¹⁵ “Whether a complaint is sufficient, however, differs significantly depending on which of these two functions the State relies upon it to perform.” *Supra*, note 7 at 474. The requisites of a complaint for an information are not as stringent as those for a search warrant. *Wells v. State*, 516 S.W.2d 663 (Tex. Cr. App 1975).

¹⁶ Article 21.22, Code of Criminal Procedure.

¹⁷ Article 404, Texas Code of Criminal Procedure (1854).

¹⁸ Section 311.024, Government Code, provides that “headings of titles, subtitles, chapters or sections do not limit or expand the meaning of a statute.” In the Code Construction Act’s application provision, Section 311.002, it specifically states that it applies to any provision of the Code of Criminal Procedure passed

after the 60th Legislative session.

¹⁹ *Wilson v. State*, 10 S.W. 749 (Tex. Ct. App. 1889).

²⁰ Article 45.018, Code of Criminal Procedure.

²¹ Article 45.019, Code of Criminal Procedure.

²² Defendant’s motion to quash criminal complaint against him was timely, where defendant presented motion on same day trial on merits was set and State did not argue, nor did brief reflect, that any act was performed that commenced the trial on the merits; State’s argument in its reply brief that motion to quash constituted commencement was without merit, as if trial began with motion to quash, motion could never be timely presented. *State v. Sanchez*, 2003 WL 1848611 (Tex. App.-Dallas Apr 10, 2003) (NO. 05-02-00717-CR), rehearing overruled (May 28, 2003), petition for discretionary review granted (Oct 01, 2003).

²³ *Supra*, note 7 at 474.

Foreign Nationals continued from page 1

So how are courts able to identify Mexican nationals ineligible to obtain a driver’s license? These are several options:

1. The Matricula Consular—Mexican consulates issue photo identification cards (called the “matricula consular”) to Mexican nationals residing in the United States. The matricula consular identification card is issued under the authority of the Vienna Convention, a treaty ratified by both the United States and Mexico. Although the matricula consular identification card resembles a driver’s license in appearance and size, it does not grant driving privileges to the holder.

Mexican consulates issue the matricula consular upon proper proof including presentation of an original Mexican birth certificate,


official Mexican photo ID (such as a Mexican voter registration card or a Mexican driver’s license), and proof of the person’s local address in the United States.

Beginning in March 2002, Mexican consulates began to issue a redesigned matricula consular identification card incorporating anti-forgery security measures. As matricula consular ID cards expire, they are being replaced with the newly improved cards.

2. Mexican Voter Registration Card—Unlike voter registration cards in the United States, Mexican voter registration cards are issued by a single federal agency and included a photograph of the qualified voter. A Mexican voter registration card includes the name and date of birth of the holder. (Note: Although the voter registration card will list an

address, it will be for the holder’s residence in Mexico.)

3. Mexican Driver’s License—Like the United States and Canada, each state in Mexico issues its own driver’s license. Driver’s licenses issued by Mexican states are as varied in appearance as driver’s licenses issued by the various states of the United States. Driver’s licenses issued by Mexican states include basic identifying information including: name, address (in Mexico), and date of birth.

With reasonable certainty, identity of Mexican nationals can be established through any of the above forms of identification. Assuming that current requirements to obtain driver’s license in the United States remain unchanged, these forms of identification are the best way to identify individuals appearing in our courts. 



LIVE AND INTERACTIVE WEB-BASED TRAINING SEMINARS

Texas Municipal Courts Education Center is proud to present its 1st set of WEBINAR TRAINING PROGRAMS. Webinar (web u`nâr) 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.

The Webinars will be held every Friday from 10:30 a.m. - 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. Participants will need to be at their computer a few minutes prior to 10:30 a.m. so that the seminar may start on-time. All levels of computer users are encouraged to attend, the programs will run themselves. Upon registration, you will receive more instructions on how to participate. There is no charge to participate.

WEBINAR TRAINING SCHEDULE

- | | |
|--|---|
| (1) June 18, 2004
Register by: June 16, 2004 | Seminar Name: Traffic Trends 100 Enrolled!
Presenter: W. Clay Abbott, TMCEC |
| (2) June 25, 2004
Register by: June 23, 2004 | Seminar Name: Juveniles 95 Enrolled!
Presenter: Ryan Kellus Turner, TMCEC |
| (3) July 2, 2004
Register by: June 30, 2004 | Seminar Name: Warrants 113 Enrolled!
Presenter: Margaret Robbins, TMCEC |
| (4) July 9, 2004
Register by: July 7, 2004 | Seminar Name: Court Costs
Presenter: Rene Henry, OCA |
| (5) July 16, 2004
Register by: July 14, 2004 | Seminar Name: Collections
Presenter: Jim Lehman, OCA |
| (6) July 23, 2004
Register by: July 21, 2004 | Seminar Name: Court Security
Presenter: Judge Allen Gilbert, San Angelo |
| (7) July 30, 2004
Register by: July 28, 2004 | Seminar Name: Ethics
Presenter: Seana Willing, CJC |
| (8) August 6, 2004
Register by: August 4, 2004 | Seminar Name: Open Records/Rule 12
Presenter: Ted Wood, OCA |
| (9) August 13, 2004
Register by: August 11, 2004 | Seminar Name: Judgments
Presenter: Margaret Robbins, TMCEC |
| (10) August 20, 2004
Register by: August 18, 2004 | Seminar Name: Foreign Nationals
Presenter: John Vasquez |

WEBINAR REGISTRATION FORM

Name (please print legibly): _____

Street: _____ City: _____ Zip: _____

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

Primary City Served: _____ Other Cities Served: _____

E-mail address (required): _____

Status:

- | | | |
|--|--|---------------------------------------|
| <input type="checkbox"/> Presiding Judge | <input type="checkbox"/> Associate/Alternate Judge | |
| <input type="checkbox"/> Court Administrator | <input type="checkbox"/> Court Clerk | <input type="checkbox"/> Deputy Clerk |
| <input type="checkbox"/> Bailiff/Warrant Officer | <input type="checkbox"/> Prosecutor | <input type="checkbox"/> Other: _____ |

Internet connection:

- | | | |
|----------------------------------|---------------------------------------|--------------------------------|
| <input type="checkbox"/> Dial-up | <input type="checkbox"/> DSL | <input type="checkbox"/> Cable |
| <input type="checkbox"/> T1 | <input type="checkbox"/> Other: _____ | |

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

- | | | | |
|--|---|--|--|
| <input type="checkbox"/> July 9, 2004 | <input type="checkbox"/> July 16, 2004 | <input type="checkbox"/> July 23, 2004 | |
| <input type="checkbox"/> July 30, 2004 | <input type="checkbox"/> August 6, 2004 | <input type="checkbox"/> August 13, 2004 | <input type="checkbox"/> August 20, 2004 |

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

Participant Signature _____

Date _____

TMCEC • 1609 Shoal Creek Boulevard, Suite 302 • Austin, TX 78701 • FAX 512.435.6118

Who Should Attend?

These webinar seminars are designed for all court personnel: judges, court administrators, clerks, bailiffs, warrant officers, warrant clerks and prosecutors. This is a unique training opportunity because court personnel may participate alone or with all the court employees. Also, training could be used as a starting block for in-house court training in that courts could continue to discuss the information presented after the webinar has concluded.

With a wide array of topics, you can attend them all, or attend only those of the most benefit to you or your court. Embrace the opportunity to refresh your knowledge, check your understanding or compare your court's processes to those in other courts.

The Webinars do NOT fulfill the mandatory requirements for judicial education for judges. Participation DOES count towards continuing education for the clerks' certification program. MCLE credit has been approved by the State Bar of Texas.



The Clerk's Role in Preparing Complaints

By Margaret Robbins, Program Director, TMCEC

Complaints! No, not the whining kind, but the kind filed in municipal court. When a complaint is filed with the court, it gives the court jurisdiction over the defendant. The complaint is important to the defendant in that it gives the defendant notice of what he or she is being charged with so that the defendant can prepare a defense. Defendants in municipal court are entitled to a copy of the complaint at least one day before the prosecution of the case. Therefore, court clerks should always have the complaint prepared and sworn to a few days before trial so that the defendant may obtain a copy.

The wording on complaints is decided by the prosecutor. Why then should municipal court clerks have to know about complaints? Read further for the answer to that question.

Even though the prosecutor decides what to prosecute and how to prosecute a case in the court, many municipal courts in Texas do not have a full-time prosecutor or have a prosecutor that is accessible to court clerks. As a result, municipal court clerks have to "hunt down" the wording of the complaints in order to prepare them. Many clerks call neighboring cities or call the Texas Municipal Courts Education Center (TMCEC), hoping that these sources can help them.

Although the Center has a few sample complaints in the Center's *Forms Book*, the Center does not provide a large number of complaints because each prosecutor must decide how to charge

a defendant. This means that the prosecutor must determine the wording on complaints used as charging instruments at trial.

General information on complaints is found in the study guides for the Municipal Court Clerks Certification Program (Level I: *Procedures before Trial* and Level II: *Overview of Processing Cases*). Although the information in the guides does not provide wording for complaints, it does help clerks to better understand how to prepare complaints by providing information about the development of complaints, required wording and how to handle issues such as misspelling a defendant's name.

All complaints must contain some magic words. The beginning of the complaint must commence with, "In the name and by the authority of the State of Texas," and must conclude with, "Against the peace and dignity of the State." If the complaint involves a city ordinance violation, the complaint may also conclude, "Contrary to said ordinance."


Most complaints, although not all, must contain a culpable mental state—intentionally, knowingly, recklessly and criminal negligence. Complaints must allege a culpable mental state unless a statute provides that it is not required. Traffic offenses are an exception and are generally considered strict liability offenses. This means that the prosecutor must prove that the defendant committed the traffic offense, but not that the defendant intended to commit the traffic offense.

The location must be noted if the location is an element of the offense. If the crime involves a victim, the victim must be named in the complaint. Sometimes ownership must be alleged if property is an element of the offense. Also, manner and means may have to be contained in the complaint. For example, in assault cases, the complaint must allege "striking" the victim with his or her hands.

The complaint must contain the name of the city to give the municipal court jurisdiction. The complaint must state the date that the offense occurred as definitely as possible to show that the complaint was filed within two years as required by Article 12.02, C.C.P., the statute dealing with the limitation of filing misdemeanors. All complaints must be sworn to and signed by an affiant who has personal knowledge or good reason to believe based on information provided by a person who has personal knowledge. The person administering the oath must have authority to administer the oath and after administering the oath, the person must sign the *jurat* on the complaint. The *jurat* is the certificate of the person before whom the complaint is being sworn. The complaint must also have attached to it the municipal court seal or it is defective.

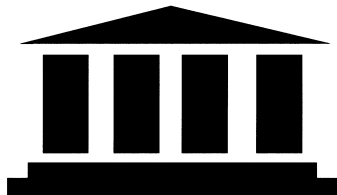
Clerks should, however, strive to make sure that a complaint does not contain grammatical and spelling errors. Generally, mere errors in grammar do not make an otherwise valid complaint invalid, but what if the name of the

defendant or victim is misspelled? There is a doctrine called *idem sonans*, which means that if the names can be sounded the same despite a variance in spelling. The misspelled name will not make the complaint defective.

This is just a brief synopsis of information and issues that clerks must be aware of in order to properly prepare and process complaints for the court. For more detailed information on complaints, clerks can review the TMCEC Study Guides: Level I—*Procedures before Trial* and Level II—*Overview of Processing Cases*. 

Municipal Court Week

Plan to celebrate the role of your court in your community November 1-5, 2004. Watch this newsletter for more information.



Level I Study Guides

TMCEC has completed revision of the Level I study guides for the Municipal Court Clerks Certification Program. These are available online at www.tmcec.com or may be purchased from TMCEC for \$25 (800/252-3718). Designed to prepare clerks for the Level I certification exam, the 10 guides are excellent resources for all court support personnel. Judges, clerks and prosecutors will find these to be handy reference guides as they provide excellent overviews of municipal procedures. The topics are shown below:

- *The Courts: An Overview*
- *Authority and Duties*
- *Ethics*
- *Procedures Before Trial*
- *Trial Procedures*
- *Post-Trial Procedures*
- *State & City Reports*
- *Traffic Law*
- *Juveniles*
- *Communications, Time Management and Writing and Office Skills*

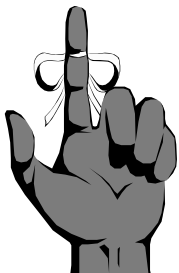
NEW! An indexed reference section has been added to assist the reader in locating information within the study guides.

The TMCEC staff expresses its appreciation of the following volunteers who helped with the final proofing of the guides:

- Leisa Hardin
- Luane Petrash
- Hilda Phariss
- Carol Gauntt
- Tracie Glaeser

The Level II guides should be revised by the end of August. The cost will be \$25 for a guide.

TMCEC, the Texas Municipal Courts Association, the Texas Court Clerks Association, and Texas State University-San Marcos sponsor the Municipal Court Clerks Certification Program collaboratively.



REMINDER: Level I, Level II and Level III Certified Court Clerks

Your 2003-2004 Certification Renewal Application is due by August 31, 2004. The proof of training that you submit will have been completed between September 1, 2003 – August 31, 2004.

Level I and Level II certified court clerks must attend 12 hours of continuing education each academic year (September – August) and CMCC, Level III certified court clerks, must attend 20 hours of continuing education each academic year (September – August).

Three reminder letters were mailed to clerks who have not submitted the application. If you have not submitted your application and have not seen a reminder letter, contact Jo Dale as soon as possible.

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



COLLECTIONS CORNER

The Fine Collections System

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

Objectives of a Collections Program

A fine collections program has two main objectives. The first objective is to enhance compliance with court-ordered sanctions, whether it be the payment of court costs, fines and fees and/or resolution through another disposition (*e.g.*, community service). Not only should a collections program improve and increase the collection of court costs, fines and fees, it should also increase respect for court orders. A program should be designed to ensure that the defendant is given every reasonable opportunity to comply with the sentence imposed by a court.

The second objective of a collections program is to relieve a judge of routine collection matters, freeing the judge to devote his or her time to judicial matters. The collections staff can effectively evaluate collection issues and make recommendations to the court based on verified facts.

Establishment of a Collections Program

A successful collections program must have a specialized collections staff that has the sole responsibility for all collection tasks. The establishment of a collections department responsible for the collection of court costs, fines and fees, is the most important step in increasing fines and fees and court cost revenues, and often the most difficult. Depending on court size and case activity, a municipal court may just want to create a collections coordinator position rather than

establish an entire collections department.

In practice, a collections program may be administered by a separate department within a larger office (*e.g.*, the municipal court) or by a single staff member of a larger office (*e.g.*, municipal court clerk's office) who has the specific, designated responsibility of collecting court costs, fines and fees. Whatever the makeup, a collections program can only succeed if the program and the collections staff have the full support and confidence of the court(s) they serve. The collections staff should operate as the financial enforcement arm of the court, following predetermined criteria for handling payment and/or other disposition of court costs, fines and fees assessed by the court.

It is important to note that the collections department or collections coordinator serves the court. In all situations concerning any case assigned to the collections department or coordinator, the court is the absolute final authority.

Collections Process

Essentially, the collections process is as follows:

- all court costs, fines and fees are due at pleading/sentencing;
- the collections coordinator or department will review and evaluate any request for extension of time for payment;
- payment goals must be predetermined and agreed to by the court(s). In most of the existing fine collections programs,

the primary payment goal is: 50% of the assessment must be paid within 48 hours; 80% percent must be paid within 30 days; and 100% must be paid within 60 days. Reasonable alternatives to the primary payment goal should be developed and approved (*e.g.*, two 50% payments within 60 days). However, the primary payment goal should almost always prevail.

A. Fines and Court Costs Due at Pleading/Sentencing

Prior to implementation of a collections program, notices should be posted in the court and information about the program must be made available to each area of the court and each city department that will be affected. The notice must clearly indicate that court costs, fees and fines are due at the time of pleading/sentencing and those not prepared to pay will be sent to the collections department. The collections coordinator or department should provide the court with copies of these notices along with directions. Notices should also be kept in the case file for each defendant.

B. Defendant Not Prepared to Pay in Full Must Report to the Collections Coordinator or Department

At sentencing, the judge assesses all court costs, fees and fines. Advanced notification will have made it clear to the defendant (or his or her attorney if applicable) that payment is due in full on the day of pleading/sentencing. If

the defendant is unable to pay in full, the judge will direct him or her to the collections coordinator or department. In the sentencing order, a judge may enter the terms for payment of court costs, fees and fines, or a judge may simply insert the phrase, "as directed by the collections coordinator (or department)." The court clerk will then direct the defendant to the collections coordinator or department with a sheet indicating the amount of the court costs, fines and fees due.

If the defendant enters a plea at the window at the municipal court (per a standing order of the court) without personally seeing a judge, the defendant must also be prepared to pay in full all court costs, fines and fees assessed per the court's standing order. If the defendant is unable to pay in full, he/she must be directed to the collections coordinator or department with a sheet indicating the amount of court costs, fines and fees due.

C. Defendant Must Submit an Application Requesting Additional Time to Pay and the Information is Verified

At the collections department or the office of the collections coordinator, the defendant will be required to complete an "Application for Extension of Time for Payment." The information provided by the defendant is then verified by the collections staff.

D. Defendant is Interviewed

After the information on the application is verified, the collections coordinator or a member of the collections department staff will interview the defendant and evaluate the financial information submitted. The interviewer will either approve or reject the request and then take the appropriate action.

E. If Defendant Qualifies for Extension of Payment

If the extension is approved, the defendant will sign an "Extension of Time for Payment Agreement." The case is then entered into the collections department's or court's data base system and monitored for compliance. Except in extreme cases, payment terms should not exceed those of the pre-established primary payment goal. The court is then notified of the action taken.

F. If Defendant Fails to Qualify for Extension of Payment

If a defendant does not qualify for an extension, the collections coordinator or collections department staff may:

- require the defendant to pay in full immediately;
- assign the defendant to a community service or public works program in lieu of payment, if such an option is available; or
- return the defendant to court with an explanation and supporting documentation.

G. If Defendant Defaults

If a defendant defaults, the collections coordinator or collections department staff will attempt contact by telephone and/or mail. If successful collection of the assessment cannot be accomplished, the collections staff may, depending on how the program has been established, take one of the following actions:

- advise the court and recommend that a *capias pro fine* ("CPF") be issued; or
- issue a CPF and forward it to the police department for service or assign it to an "in-house" warrant officer or city marshal for service.

Summary

1. A collections program has two main objectives: a) to increase compliance with court-ordered sanctions, including the payment of court costs, fees and fines, and to increase respect for court orders; and b) to relieve a judge of routine collections matters, leaving him or her more time to devote to judicial matters.
2. A defendant is given every reasonable opportunity to comply with a sentence imposed by a court.
3. Collections staff can effectively evaluate collections issues and make recommendations to the court based on verified facts.
4. The collections process requires the following:
 - a. all fines and court costs are due on the day of pleading/sentencing;
 - b. any request for extension of time for payment of fine and court costs is reviewed and evaluated by collections staff; and
 - c. payment terms are predetermined and agreed to by the courts. ⚡

Websites Helpful in Collections

Switchboard: www.switchboard.com

White Pages: www.whitepages.com

Think Direct: www.thinkdirect.com

411 Locate: www.411locate.com

Anywho: www.anywho.com

World Pages: www.worldpages.com

Yahoo: www.people.yahoo.com

Infospace: www.infospace.com

CaseMail - Yet another Way Email Makes Life Easier

By Jo Dale Bearden, Program Coordinator, TMCEC

At the beginning of every academic year and at every judges program, TMCEC provides constituents with a state and federal case law update. While U.S. Supreme Court decisions and Texas Court of Criminal Appeals decisions are binding on all courts, it is important that all judges stay abreast of case law handed down the Court of Appeal for the area of the state (herein referred to as appellate district). Historically, this has required judges to read advance sheets and sort out cases from the various 14 appellate districts; technology has made the process much easier with CaseMail.

CaseMail is a FREE and easy-to-use service from the Court of Appeals that e-mails updates regarding case activity in the appellate district(s) that you, the user, requests. Users are able to define which cases to *track*, receive updates, and choose which appellate district(s) from which to receive updates.

directs you to your court of appeals district (if you are not sure which court of appeals district you are in, see the map and county breakdown on page 17 of the this *Recorder*). For example, for Austin I would choose Third Court of Appeals.

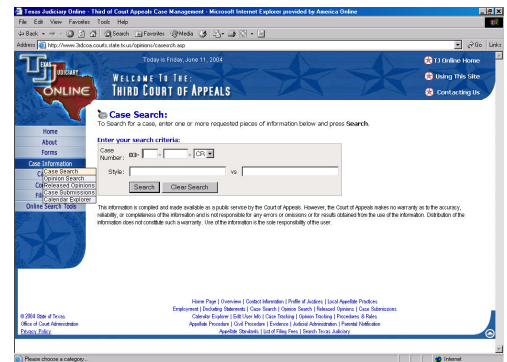
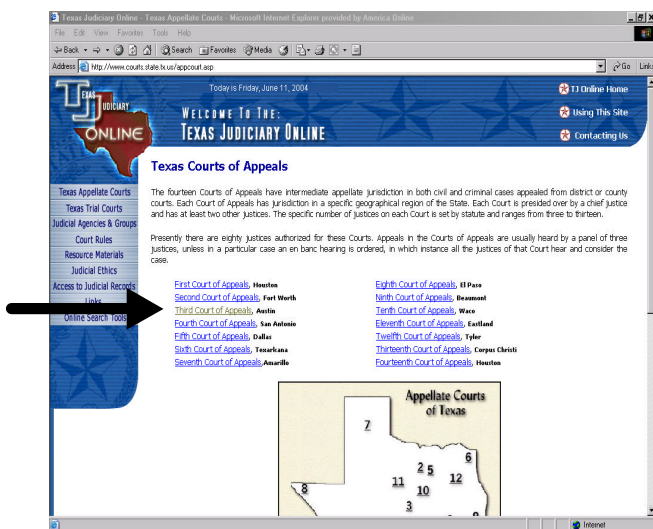
Once you are on the Court of Appeals site of your choosing, you can read more information about CaseMail from the *Click here for more information link*. Alternatively, if you are ready to sign-up, you put your mouse over the CaseMail menu on the left and choose *Edit User Info*. On that site, you choose to *create new user account* and you are directed to the *Create New User Account* webpage.

When creating a new account, the *user name* can be anything the user wishes, the only limitation is if the name you choose is already taken. The e-mail address, on the other hand, must be a

REAL address because that is where your updates are sent.

From the CaseMail menu on the left side, users have three options. The first allows the user to sign-up for CaseMail or to change options about the user, such as a password change. Second, the *Case Tracking*, takes the user to their own list of cases that he or she is tracking.

From this page, a user can see a list of the cases he or she is tracking. You can delete cases in this screen by clicking the *X delete* icon if you no longer want to track them, but you must be on the case page in order to add a case (adding a case will be discussed later in the article). Third, the *Opinion Tracking* option allows the user to designate which courts of appeals he or she would like to receive an e-mail from each time that court releases an opinion. A user may designate as many courts of appeals as they would like by clicking on the e-mail icon, which toggles the *send e-mail* column between yes and no.

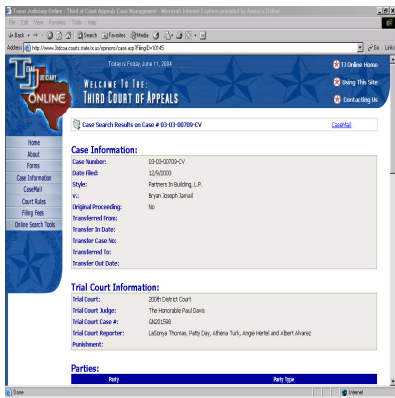


To start, go to www.courts.state.tx.us/apcourt.asp and click on the link that

list of cases that he or she is tracking.

You then return back to your *Case Tracking* webpage.

As aforementioned, CaseMail is a FREE, easy-to-use service. TMCEC encourages all judges with e-mail access to (1) identify which Court of Appeals has jurisdiction in their municipality (see map and listing of counties), and (2) subscribe to this free service. It is an ideal way for judges to stay informed about case law developments in their area of the State. ⚖️



Texas Courts of Appeal

1st Court of Appeals, Houston

Austin
Brazoria
Burleson
Chambers
Colorado
Fort Bend
Galveston
Grimes
Harris
Trinity
Walker
Waller
Washington

2nd Court of Appeals, Fort Worth

Archer
Clay
Cooke
Denton
Hood
Jack
Montague
Parker
Tarrant

Wichita
Wise
Young

3rd Court of Appeals, Austin

Bastrop
Bell
Blanco
Burnet
Caldwell
Coke
Comal
Concho
Fayette
Hays
Irion
Lampasas
Lee
Llano
McCulloch
Milam
Mills
Runnels
San Saba
Schleicher
Sterling
Tom Green
Travis
Williamson

4th Court of Appeals, San Antonio

Atascosa
Bandera
Bexar
Brooks
Dimmit
Duval
Edwards
Frio
Gillespie
Guadalupe
Jim Hogg
Jim Wells
Karnes
Kendall
Kerr

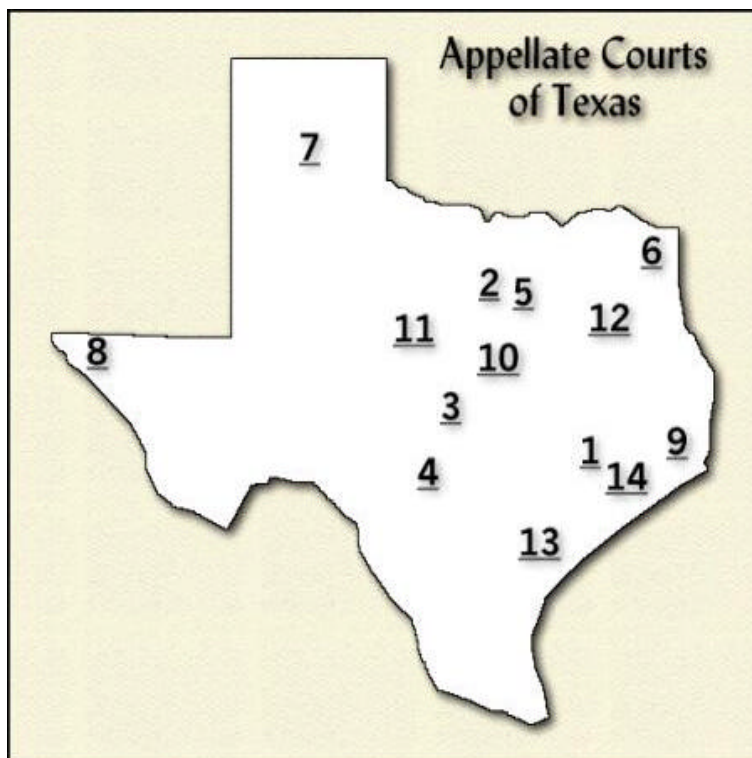
Kimble
Kinney
La Salle
Mason
Maverick
McMullen
Medina
Menard
Real
Starr
Sutton
Uvalde
Val Verde
Webb
Wilson
Zapata
Zavala

5th Court of Appeals, Dallas

Dallas
Collin
Grayson
Hunt
Rockwall
Van Zandt
Kaufman

6th Court of Appeals, Texarkana

Bowie
Camp
Cass
Delta
Fannin
Franklin
Gregg
Harrison
Hopkins
Hunt
Lamar
Marion
Morris
Panola
Red River
Rusk
Titus
Upshur
Wood



Courts of Appeal continued on page 19



COURT SECURITY

Spanish for Bailiffs

The duties and responsibilities of a bailiff vary from court to court, the one unvarying duty being that of court security. In keeping the court secure, we often focus on equipment, policies/procedures, and plans. In this article, we take a different focus, a look at communication and security.

The ability to communicate with all our court participants is often an overlooked aspect of court security, but an important aspect. Identifying problem situations before they occur is a proactive approach to court security. Often, court participants become difficult people when the communication between them and court personnel break down.

Therefore, it is important that those controlling the courtroom traffic flow be able to communicate with as many defendants as possible.

According to the 2000 Census Data, 26 percent of Texan homes speak Spanish.¹ Many courts have certified Spanish translators on staff, but those translators are not always available. In order to improve communication, thereby improving security, speaking fluent Spanish is not required. Instead, court security can be improved simply by being able to communicate and understand key terms and phrases.

Following is a list of Spanish phrases that are helpful in the courtroom. The list is not exhaustive; instead, it is an introduction to a few terms and phrases² that will aide in improving the communication in the courtroom. For a Spanish pronunciation key with sounds, visit www.lingolex.com/pronounce/.

Location - words used to indicate or locate objects, people or other places

Question: ¿Dónde pago mi infracción?
(Where do I pay my ticket?)

a / hacia - toward
por aquí - this way
derecha - right
izquierda - left
adelante - forward/ahead
atrás - back/behind
arriba - up
abajo - down
aquí - here
allá - there

Answer: Por aquí a la derecha. (This way, to the right.)

Useful Court Vocabulary

Buenos días. - Good Morning.
Buenas tardes. - Good Afternoon.
¿Dígame? - Yes?
¿Puedo servirle? - Can I help you?
el juez - judge
el fiscal - prosecutor
la corte - courthouse
la sala de corte - courtroom
infracción - ticket
multa - fine
tiene que - you have to
regresar - to return
pagar - to pay
ir - to go
esperar - to wait
por favor - please
en un momento - in a moment
¿Cómo se dice? - How do you say?

Useful Phrases in Court

Entre - Come in
Pase por aquí. - Come this way.
Venga conmigo. - Come with me.
No se mueva. - Don't move.
¿Perdón? - Excuse me?
Pase otra vez. - Go through again.
Tome asiento. - Have a seat.
Hagan una fila. - Make one line.
Hagan dos filas. - Make two lines.
¿Puedo revisar su bolsa? - May I check your bag/purse?
No se permite comida o bebidas en la corte. - No food or drinks allowed in the court.
Ponga los objetos de metal en la charola. - Place metal objects in the tray.
Ponga su bolsa en la máquina. - Place the bag/purse in the machine.
Levante los brazos. - Raise your arms.
Quítese el sombrero dentro de la sala de corte. - Remove your hat inside the courtroom.
Haga fila. - Stand in line.
De pie. - Stand up/All rise.
Salga. - Step out.
Deténgase. - Stop.
Saque todo de sus bolsillos. - Take everything out of your pockets.
Llévelo a su carro. - Take it to your car.
Dígame. - Tell me.
No se permite traer esto a la corte. - That is not allowed in the court.
Tire su chicle. - Throw away your gum.

Voltee su gorra. - Turn your baseball hat around.

Apague su teléfono. - Turn your telephone off.

Espere. - Wait.

A la salida se lo damos. - We'll give it to you on your way out.

¿Cómo se llama? - What is your name?

¿De quién es esto? - Whose is this?

Tiene que dejarlo aquí. - You have to leave it here.

Security Related Terms/Phrases

pistola/cohete - pistol

rifle - rifle

escopeta - shotgun

tijeras - scissors

navaja/cuchillo/filero - knife

botella - bottle

vidrio - glass

¡Suelta el arma! - Drop the gun!

¡Manos arriba! - Hands up!

¡Voltéese despacio. - Turn around slowly.

¡Alto! - Stop!

¡Extienda los brazos hacia adelante! - Extend your arms in front of you!

¡Voltéese de espalda a mí! - Turn with your back towards me!

Deme la otra mano. - Give me your other hand.

Ponga las manos de trásde la espalda. - Put your hands behind your back.

Levántese. - Get up.

Siéntese. - Sit down.

Está arrestado. - You are under arrest.

¹ *Language Use and English-Speaking Ability: 2000,*

Census 2000 Brief, Issued October 2003.

² Terms and phrases compiled from 2004 Bailiff/Warrant Officer course material prepared by Ricardo Salazar and the Intermediate Spanish for Criminal Justice Response Professionals TCLEOSE Lesson Plan.

Courts of Appeal continued from page 17

7th Court of Appeals, Amarillo	Lipscomb	Reagan	Johnson	Nolan
Armstrong	Lubbock	Reeves	Leon	Palo Pinto
Bailey	Lynn	Terrell	Limestone	Scurry
Briscoe	Moore	Upton	Madison	Shackelford
Carson	Motley	Ward	McLennan	Stephens
Castro	Ochiltree	Winkle	Navarro	Stonewall
Childress	Oldham		Robertson	Taylor
Cochran	Parmer	9th Court of Appeals, Beaumont	Somervell	Throckmorton
Collingsworth	Potter	Angelina		
Cottle	Randall	Hardin	11th Court of Appeals, Eastland	12th Court of Appeals, Tyler
Crosby	Roberts	Jasper	Baylor	Anderson
Dallam	Sherman	Jefferson	Borden	Cherokee
Deaf Smith	Swisher	Liberty	Brown	Gregg
Dickens	Terry	Montgomery	Callahan	Henderson
Donley	Wheeler	Newton	Coleman	Hopkins
Floyd	Wilbarger	Orange	Comanche	Houston
Foard	Yoakum	Polk	Dawson	Kaufman
Garza		San Jacinto	Eastland	Nacogdoches
Gray	8th Court of Appeals, El Paso	Tyler	Ector	Panola
Hale	Andrews		Erath	Rains
Hall	Brewster	10th Court of Appeals, Waco	Fisher	Rusk
Hansford	Crane	Bosque	Gaines	Sabine
Hardeman	Crockett	Brazos	Glasscock	San Augustine
Hartley	Culberson	Coryell	Haskell	Shelby
Hemphill	El Paso	Ellis	Howard	Smith
Hockley	Hudspeth	Falls	Jones	Upshur
Hutchinson	Jeff Davis	Freestone	Knox	Van Zandt
Kent	Loving	Hamilton	Martin	Wood
King	Pecos	Hill	Midland	
Lamb	Presidio		Mitchell	

13th Court of Appeals, Corpus Christi and Edinburg

Aransas
Bee
Calhoun
Cameron
De Witt
Goliad
Gonzales
Hidalgo
Jackson
Kenedy
Kleberg
Lavaca
Live Oak
Matagorda
Nueces
Refugio
San Patricio
Victoria
Wharton
Willacy

14th Court of Appeals, Houston

Austin
Brazoria
Burlison
Chambers
Colorado
Fort Bend
Galveston
Grimes
Harris
Trinity
Walker
Waller
Washington

Webinars: Missing an Event Doesn't Mean You Have to Miss Out

Did you miss the first ever TMCEC Webinar training program: *Traffic Trends* on June 18th? Even if you missed the event itself, you don't have to miss out on the information presented by W. Clay Abbott in the Webinar. TMCEC has arranged for a recording of each Webinar session to be made available shortly after each event.

You can access the *Traffic Trends* recording by going to the following Internet address and entering your name and email address: <https://tmcec.webex.com/tmcec/onstage/tool/record/viewrecording1.php?EventID=277193509>.

Whether you were able to attend the first Webinar session or not, be sure to join us for the other exciting sessions we are offering this summer! (See page 10 in this newsletter for a listing of the upcoming Webinar sessions.)

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