

Court Ethics

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INTRODUCTION

Ethics is defined in *Black's Law Dictionary* as “of or relating to moral action, conduct, motive, or character...professionally right or befitting; conforming to professional standards of conduct.” Ethics is one of the most important topics for clerks to study because of the contact that they have with the judge, the parties to a case, and the public. In every court, incidents occur daily that require clerks to make ethical judgments over what to do or what to say.

The court clerk plays an essential role in assuring the integrity and efficiency of the courts and in maintaining public confidence in the fairness of the Texas judicial system. Clerks not only perform the administrative work of the courts (e.g., caseflow and records management, filing, collecting court costs and fines), but they also help shape the public's perception of the Texas judicial system by acting as a liaison between the public and judiciary. They must find the proper balance among responsibilities as public servants, as court clerks, as city employees, and as individuals. In addition to the difficulty in maintaining this delicate balance, non-judicial employees are expected to abide by the same rules that apply to the judges as outlined in the canons of the *Code of Judicial Conduct*. The *Code of Judicial Conduct*, which is promulgated by the Texas Supreme Court, outlines basic precepts that judicial officers and court employees should follow and assists in establishing and maintaining high standards of judicial and personal conduct.

As clerks read this study guide, they will find that the ethical standards found in the *Code of Judicial Conduct* were written to be broad and flexible enough to offer guidance to judges and clerks in all Texas courts. Ethical rules cannot address every situation, but personal integrity and judgment are crucial to the judicial system.

PART 1 ETHICS AND INTEGRITY

Generally, ethics is about what is right or wrong. What a person considers to be ethical may depend on that person's value system. A value system consists of personal beliefs developed through life experiences and teachings. A person's values are standards in which he or she believes strongly; a person generally does not change or compromise their values unless there is a very good reason to do so.

To better serve the judicial system, municipal court clerks should strive for high personal integrity. Integrity is adhering to one's moral values or putting into practice one's values and beliefs. The following is a list of suggestions to help clerks attain and maintain integrity and professionalism.

- Have a positive attitude.
- Carry out responsibilities in as courteous a manner as possible.
- Support open communication, hard work, and dedication.
- Avoid conflicts of interest.
- Respect privileged information.
- Do not attempt to use the official position to secure unwarranted privileges or exemptions.
- Keep up-to-date on the laws and procedure.
- Eliminate fraud and mismanagement of funds.

- Eliminate verbal or nonverbal manifestations of bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.
- Adopt time and stress management skills.
- Be committed to the standards in the *Code of Judicial Conduct*.

1. Define ethics. _____

2. Define integrity. _____

PART 2

STATE COMMISSION ON JUDICIAL CONDUCT

The State Commission on Judicial Conduct (the Commission) is charged with promoting public confidence in the integrity, independence, competence, and impartiality of the judiciary and with encouraging judges to maintain high standards of conduct both on and off the bench.

The Commission's objectives are threefold:

- preserve the integrity of all judges in the State;
- ensure public confidence in the judiciary; and
- encourage judges to maintain high standards of both professional and personal conduct.

To achieve these objectives, the Commission issues discipline (public/private sanctions and orders of additional education) to judges who violate legal or ethical standards but also assists judges who have an underlying personal impairment that may be connected to the misconduct. In rare situations, the Commission can petition the Supreme Court of Texas to remove a judge from the bench after a lengthy process which includes a public civil trial. In addition, the Commission members and staff participate as faculty members in continuing education programs at all levels of the judiciary as well as providing ethics advice to judges.

The Commission issues annual reports, available online at www.scjc.texas.gov. The information in this guide uses the Commission's annual reports through the most current report.

The Commission's authority is exercised over (an annual average of) 4,000 judges and judicial officers in Texas, including appellate judges, district judges, county judges, justices of the peace, municipal judges, masters, magistrates, and retired and former judges who are available for assignment as visiting judges. The Commission does not have jurisdiction over federal judges and magistrates, administrative hearing officers for state agencies or the State Office of Administrative Hearings, or private mediators or arbitrators. The Commission is an agency of the judicial branch of state government and administers judicial discipline, but the Commission does not have the power or authority of a court.

A. Authority for Operation of the Commission

The Commission was created by an amendment to the Texas Constitution in 1965. Article V, Section 1-a of the Texas Constitution and Chapter 33 of the Government Code are the sources of authority under which the Commission operates.

B. Procedures

The constitutional and statutory provisions, together with the *Texas Procedural Rules for the Removal or Retirement of Judges* promulgated by the Texas Supreme Court, make up the procedural framework within which the Commission operates.

1. Complaints

The Commission creates a complaint file upon receipt of a written complaint naming a Texas judge. Currently, the Commission only accepts sworn complaints (complaints with an accompanying affidavit) and does not accept electronically filed complaints. The Commission has the discretion to initiate complaints on its own motion based on anonymous submissions, news reports, court documents, or other sources that indicate possible misconduct or appear to bring discredit upon the judiciary. A complainant may request that the Commission keep his or her identity confidential. However, anonymous complaints and requests for confidentiality may restrict the Commission's ability to thoroughly investigate the allegations. Furthermore, while the Commission strives to maintain the confidentiality of those complainants who request it, the Commission may, in its discretion, reveal the identity of a confidential complainant when doing so serves the Commission's interest in protecting the public by addressing misconduct. When a complaint is received, a file is established and reviewed by Commission staff. The case is analyzed and assigned an investigator or attorney who reviews the allegations. A preliminary screening determines if further investigation is appropriate. On occasion, an individual will complain to the Commission about the actions of law enforcement officers, corrections officials, lawyers, or even the federal judiciary. In these instances, no case is opened, and the individual is notified that the Commission has no jurisdiction in the matter. In other cases, the complainant may be disgruntled with a judge's decision, particularly in emotionally charged litigation such as divorce/custody cases, contested probate cases, or criminal trials. Such matters are proper for appeal. In all cases, the complainant is notified by mail that the complaint has been received. If the complaint is vague in its allegations, the complainant may be asked for more specific details or additional documentation.

If further inquiry is appropriate, the judge is informed in writing that an investigation has commenced and of the nature of the matter being investigated. The judge may be requested to respond in writing to specific inquiries or to explain the judge's authority for the actions in question. Facts may be further investigated on-site or through telephone interviews. At times, the Commission may request investigative assistance from other agencies such as the Department of Public Safety, the Texas Ranger Service, or a district attorney's office. The Commission has the right to subpoena judges to appear or to produce documents and to depose witnesses.

Each complaint is briefed by staff along with any investigative results and presented to the Commission at its regularly scheduled meeting in Austin every other month. On occasion, the Commission will convene special meetings where the Commission may request further investigation or ask the judge to provide further information. The Commission may also dismiss the case at its first presentation.

At the conclusion of every case, the complainant is notified of the outcome in accordance with statutory requirements. If the complaint is dismissed, the Commission must explain in plain and easily understandable language why the conduct alleged in the complaint failed to constitute judicial misconduct. In situations where a public sanction has been issued, the complainant is provided with a copy. If the Commission issues a private sanction, the complainant is notified of such but is not provided with a copy of the sanction nor is the complainant provided with the specifics of the private sanction.

2. Confidentiality

The Commission is not governed by the Texas Public Information Act (Chapter 552 of the Government Code), the Open Meetings Act (Chapter 551 of the Government Code), or the Texas Administrative Procedures Act (Chapter 2001 of the Government Code), as it has its own constitutional and statutory provisions regarding the confidentiality of papers, records, and proceedings. However, the Legislature, in 2013, passed legislation requiring the Commission to hold an open public meeting at least once every even-numbered year to seek public input on the Commission's mission and operations.

a. Records and Information

The availability of information and records maintained by the Commission is governed by Rule 12 of the Texas Rules of Judicial Administration, the Texas Constitution, and the Texas Government Code.

Generally, information is confidential (Sections 33.032, 33.0321, and 33.0322 of the Government Code), but there are some exceptions such as:

- public sanctions;
- suspension orders and proceedings;
- voluntary agreements to resign in lieu of disciplinary proceedings;
- papers filed in formal proceedings when formal charges are filed;
- if issues concerning a judge or the Commission is made public by sources other than the Commission, the Commission may make a public statement; and
- the Commission may not withhold from the Sunset Advisory Commission staff access to any confidential document, record, meeting, or proceeding to which Sunset staff determines access is necessary for a review.

b. Proceedings

Commission proceedings are confidential and privileged unless:

- a judge who is appearing before the Commission elects to have the hearing open to the public or to persons designated by the judge;
- the Commission issues a public admonition, warning, reprimand, or requirement that a person obtain additional training or education, in which case, all papers, documents, evidence, and records considered by the Commission shall be public; or
- the judge appeals a sanction.

When the Commission determines that formal proceedings are in order, confidentiality ends upon the convening of a formal proceeding, and such a hearing is public.

3. Meeting with the Commission

Although the meeting with the Commission is confidential in accordance with constitutional requirements, the judge has the right to waive confidentiality and open the meeting. The judge may be represented by legal counsel. If the judge wishes to introduce the testimony of others, it must, at this point, be written. Only the judge may present oral testimony under oath.

4. Possible Actions by the Commission

The following information explains the possible actions of the Commission.

a. Dismissal

Prior to the decision to dismiss, the Commission often expends considerable resources in fact collection. The Commission may choose to dismiss a case for a variety of reasons, including:

- the judge took corrective action;
- finding of no misconduct;
- lack of proof;
- no jurisdiction over the complaint because the actions were within the judge's judicial discretion;
- the judge's action did not rise to the level of judicial misconduct; or
- the judge agreed to voluntarily resign from judicial office in lieu of disciplinary action.

A complainant may request reconsideration of the dismissal of a complaint. The request must be received within 30 days of notification of the dismissal and must contain new evidence or factual material. Reconsideration can be requested only once.

b. Sanctions

In cases of judicial discipline, the Commission considers the purpose of a sanction not to secure vengeance, retribution, or punishment, but to deter any similar misconduct by judges in the future, to promote proper administration of justice, and to reassure the public that the judicial system in this State neither permits nor condones misconduct. The judicial officers of this State, even those sanctioned, are dedicated to the principle of government through rule of law and are deserving of continued confidence in their honor and integrity.

No sanction is issued by the Commission unless the judge involved has been advised of the nature of the allegations and has been afforded an opportunity to respond. No public sanction is issued unless the judge has been afforded an opportunity to appear.

Any sanction issued by the Commission may be appealed by the judge to a special court of review composed of three justices from courts of appeals selected by the Chief Justice of the Supreme Court. The review is de novo under rules of law, evidence, and procedure for civil actions. The special court of review may dismiss or affirm the Commission's decision. It may also impose a lesser or greater sanction or institute formal proceedings.

Causes for sanction of a judge may be due to willful or persistent conduct that is clearly inconsistent with the proper performance of duties or casts public discredit upon the judiciary or administration of justice.

The Commission does not have authority to change decisions of any court or to act as an appellate review board. The Commission does not give legal advice, issue advisory opinions, or sanction judges who act in good faith in reaching a legal decision, making findings of fact, or applying the law as the judge understands it.

The Commission may impose the following sanctions:

- **Additional Training:** Requiring a judge to obtain additional continuing education is a sanction that the Commission believes is especially effective. Such an order can be tailored to remedy any particular problem area in the judge's understanding of the judicial process. Such orders of additional education can be private or public.
- **Private Admonition:** A written private admonition is the least onerous of all sanctions that may be imposed by the Commission. A private admonition indicates to the judge that his or her actions were inappropriate and suggests a preferred approach to handling similar situations.
- **Private Warning or Reprimand:** A written private warning is stronger than an admonition, and a private reprimand is stronger still, spelling out the findings of fact and specifying the standards of law or ethics violated.
- **Public Admonition or Warning:** A public admonition or warning is similar to a private admonition or warning except that it is released to the public. This is meant to instruct other members of the judiciary and to reassure the public that their interests are being protected and that the high standards of the Texas judiciary are being maintained.
- **Public Reprimand:** The most serious of all sanctions that can be issued, other than formal proceedings, is the public reprimand. This sanction is issued when the Commission believes that a judge has committed serious misconduct, and both the public and the judiciary would be best served by a public statement of the judge's misconduct. Certain judges (such as district judges, county court at law judges, and court of appeals justices) are precluded from sitting by assignment as a visiting judge if they have received a public reprimand from the Commission.
- **Suspension:** A judge, indicted with a felony offense or charged with a misdemeanor involving official misconduct, may be suspended from office with or without pay pending resolution of the criminal charges. In a situation where a judge is suspended because of pending criminal charges, the Commission undertakes its own examination. The Commission does not proceed in the manner of a criminal case and does not determine guilt or innocence by the evidentiary standard of beyond a reasonable doubt; rather, by using the preponderance of the evidence standard, the Commission determines whether the judge has brought discredit upon the judiciary or engaged in willful or persistent conduct that is clearly inconsistent with the proper performance of judicial duties. This type of suspension is temporary; however, if the judge is convicted of a felony (or misdemeanors involving official misconduct) he is disqualified from the bench as a matter of law.

- **Removal or Censure:** The Commission may seek the removal or censure of a judge through formal proceedings which essentially amount to a public trial. Subpoena power is provided to enable the Commission to carry out its work. Formal proceedings are very rare. In fact, a judge has not been removed from the bench after formal proceedings since 2004; however, several judges have resigned in lieu of discipline after the Commission commenced formal proceedings.

C. Formal Proceedings

When the Commission determines that formal proceedings are in order, confidentiality ends. A formal proceeding is an adjudicative proceeding in which the judge is entitled to due process of law in the same manner as any person whose property rights are in jeopardy. The Commission seeks the appointment of a special master by the Supreme Court (who is normally an active or retired district judge). After a public hearing, with the master presiding, the master makes findings of fact. The Commission may then dismiss the complaint, publicly censure the judge, or forward the findings with a recommendation for removal. Public censure following a formal proceeding is “tantamount to denunciation of the offending conduct,” and a more severe action than remedial sanctions that may be issued prior to a formal proceeding. In the event of a recommendation for removal, the Texas Supreme Court appoints a seven-judge tribunal made up of justices from courts of appeal throughout Texas. Appeal from a decision of the tribunal is directly to the Texas Supreme Court, which considers the case under the substantial evidence rule.

Section 33.038 of the Government Code provides for automatic removal of judges who are convicted or given deferred adjudication for felony offenses or specific misdemeanor offenses involving official misconduct.

Judges who are removed or involuntarily retired may be prohibited from holding a judicial office in the future. In addition, district and appellate judges who are removed by the Commission may not be eligible for judicial retirement benefits, even losing the contributions that the judge paid into the retirement system

3. What are the three objectives of the Commission on Judicial Conduct? _____

4. How does the Commission endeavor to achieve its objectives? _____

5. What provides authority for the Commission on Judicial Conduct to operate? _____

True or False

6. A file is initiated with the Commission on Judicial Conduct when the Commission receives a telephone complaint. _____

7. Complainants may request the Commission on Judicial Conduct keep their identity confidential. _____

8. Information gathered by the Commission on Judicial Conduct may never be made public.

9. All proceedings of the Commission on Judicial Conduct are conducted publicly. _____
10. The Commission on Judicial Conduct may dismiss a case if a judge took corrective action in the case against him or her. _____
11. Improper conduct includes failure to conduct court business in a timely manner. _____
12. Judges could be reprimanded for incompetence in the performance of their duties. _____
13. Rank the following actions by the Commission in order of severity. (1= the most severe)
____ Removal-Censure
____ Private Admonition
____ Public Reprimand
____ Public Admonition

PART 3 ETHICS COMMITTEE

The Ethics Committee of the Judicial Section of the State Bar of Texas issues advisory opinions on ethical issues faced by Texas judges. Be careful; although the reasoning of these opinions is insightful and usually parallels the Commission, the opinions of the Ethics Committee are not binding on the Commission. Some of these opinions are noted in the commentary following the canons of the *Code of Judicial Conduct* provided in Part 4 of this guide. These opinions may also be accessed online at <http://www.txcourts.gov/publications-training/judicial-ethics-bench-books/judicial-ethics-opinions/>.

PART 4 CODE OF JUDICIAL CONDUCT

Canon 1 of the *Code of Judicial Conduct* requires judges to participate in establishing, maintaining, and enforcing high standards of conduct to uphold the integrity and independence of the judiciary. Canon 3C(2) says that judges should require staff, court officials, and others subject to the judge's direction and control to observe the same standards of fidelity and diligence that apply to the judge. Consequently, clerks should observe the same professional standards as the judge.

This part of the study guide includes portions of the Code that relate to municipal courts. Due to the structure and jurisdiction of the municipal courts, some canons do not apply to the municipal and justice courts and have not been included here.

Practice Note

The Code of Judicial Conduct may be obtained from the Commission or downloaded from <https://www.txcourts.gov/media/1452409/texas-code-of-judicial-conduct.pdf>. The code consists of specific rules set forth in sections under broad captions, called canons, following an introductory preamble. Commentary has been added to help clerks gain a better understanding of the canons.

Preamble

Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code of Judicial Conduct are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should be governed in their judicial and personal conduct by general ethical standards. The code is intended, however, to state basic standards, which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

Although the Preamble does not specially mention court support personnel, Canon 3C(2) says that a “judge should require staff, court officials, and others subject to the judge’s direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.” Also, Canons 3B(4), 3B(6), and 3B(10) specifically mention court staff and personnel under the judge’s direction and control. Although the Commission does not accept complaints against a clerk, (on extremely rare occurrence), a judge may be held responsible for a clerk’s actions in a disciplinary proceeding.

- | | |
|-----|---|
| 14. | Upon what principle is our legal system based? _____
_____ |
| 15. | Why should clerks observe the same professional standards as judges? _____
_____ |
| 16. | What might happen if a clerk’s conduct is improper? _____
_____ |

Canon 1: Upholding the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct and should personally observe those standards so that the integrity and independence of the judiciary is preserved. The provisions of this code are to be construed and applied to further that objective.

An honorable judicial system is one that is held in high esteem. It is a system that people respect. It is a system built on the principle of an independent judiciary.

It may be difficult for municipal courts to appear independent when they work in close proximity to law enforcement. Therefore, municipal courts should be separate from and not show favoritism to the police. If the court is located in the same building as the police department, the court should have a separate entrance. The court should have its own telephone line that, when picked up or

sent to voicemail, is answered “Municipal Court.” Having a separate room to conduct court business helps the court avoid the appearance of impropriety.

If a clerk is supervised by someone not a part of the municipal court, such as a finance director or a police captain, he or she might have a difficult time appearing unbiased and acting independently. In this instance, the supervisor could be more interested in revenue or prosecuting a case than in impartial justice. Also, some clerks wear different hats; they may be the police secretary or dispatcher in addition to their duties as court clerk. When conducting the business of the court, however, clerks should always exhibit behavior that reflects the independence and impartiality of the judicial system. Remember that public access to the justice system usually occurs through a direct encounter with court personnel.

True or False

17. The judicial system is built on the principle of being independent from the other branches of government. ____
18. When the telephone for the court is answered “police department,” it may give the public the impression that they will not be treated fairly or impartially. ____
19. Having a separate room away from the public where peace officers may swear to complaints and conduct other court business helps the court avoid any appearance of impropriety. ____

Canon 2: Avoiding Impropriety and the Appearance of Impropriety in All of the Judge’s Activities

A. A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

C. A judge shall not knowingly hold membership in any organization that practices discrimination prohibited by law.

Judges are required to conform to the standards of behavior established by the code and must avoid even the appearance of impropriety. Impropriety is improper conduct not in accordance with fact, truth, correct procedures, and ethical standards. The commission of criminal acts, including driving while intoxicated and disorderly conduct, has been the basis of past sanctions against judges. Judges are required to conform to these standards both on and off the bench and in their personal lives.

Neither a judge nor a clerk should abuse the power inherent in his or her position over other persons. Misuse of office would include:

- using the position or even letterhead showing the position to seek special privileges for himself, herself, or others;
- accepting gifts, favors, or loans for promises to influence official actions;

- doing favors for friends or family;
- endorsing a particular driving safety course or nonprofit for community service work;
- offering preferential treatment;
- accepting donations to charity or the city in exchange for dismissing citations;
- retaliating against another using the powers of the court; and
- misusing public resources, letterhead stationery, or equipment.

Remember that clerks and judges are in positions of public trust and, as such, should be concerned about both actual impropriety and the appearance of impropriety (e.g., stating personal views about people or issues that may be pending before the court or allowing the police officer to take a coffee break in the clerk's office). The canons should govern your behavior in and out of the courtroom.

True or False

20. A municipal judge may use court letterhead to write members of a fraternity urging them to join the local chapter. ____
21. A municipal judge may voluntarily testify for someone else as a character witness. ____
22. A municipal judge or clerk may be a member of the Ku Klux Klan. ____
23. The *Code of Judicial Conduct* governs a municipal judge and clerk's behavior in and out of the courtroom. ____
24. Indicate whether the following behaviors are proper or improper for a clerk.
(P=Proper; I=Improper)
 - ____ Telling the judge about the belligerent attitude of a defendant scheduled for a bench trial.
 - ____ Recommending a specific driving safety school to a defendant.
 - ____ Using court stationery to offer a product or service for purchase to earn extra money.
 - ____ Looking up your girlfriend's traffic record.
 - ____ Drinking beer while working overtime at the office.
 - ____ Asking an officer to not file a traffic ticket against a friend.
 - ____ Closing the court or decreasing fines to put pressure on the city council to increase salary and benefits for court personnel.

Canon 3: Performing the Duties of Judicial Office Impartially and Diligently (in part)

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. Judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

B. Adjudicative Responsibilities.

- (1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.
- (2) A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.
- (3) A judge shall require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice.

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

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

Note: Canon 3B(8) which deals with ex parte communications is not included here because municipal judges do not have to comply with that section of Canon 3. Instead, Canon 6C(2), specifically for municipal court judges and justices of the peace, deals with ex parte communications.

(9) A judge should dispose of all judicial matters promptly, efficiently, and fairly.

(10) A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge's court in a manner which suggests to a reasonable person the judge's probable decision on any particular case. This prohibition applies to any candidate for judicial office, with respect to judicial proceedings pending or impending in the court on which the candidate would serve if elected. A judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge or judicial candidate is a litigant in a personal capacity.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity. The discussions, votes, positions taken, and writings of appellate judges and court personnel about causes are confidences of the court and shall be revealed only through a court's judgment, a written opinion, or in accordance with Supreme Court guidelines for a court approved history project.

C. Administrative Responsibilities.

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

(2) A judge should require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the

judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

(5) A judge shall not fail to comply with Rule 12 of the Rules of Judicial Administration, knowing that the failure to comply is in violation of the rule.

D. Disciplinary Responsibilities.

(1) A judge who receives information clearly establishing that another judge has committed a violation of this code should take appropriate action. A judge having knowledge that another judge has committed a violation of this code that raises a substantial question as to the other judge's fitness for office shall inform the State Commission on Judicial Conduct or take other appropriate action.

(2) A judge who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action.

Canon 3B(1) refers to disqualification and recusal (the process by which a judge is disqualified or recuses himself or herself from hearing a case because of conflict of interest or prejudice). There are several provisions in Texas law to read along with Canon 3.

- Article V, Section 11 of the Texas Constitution. No judge shall sit in any case wherein the judge may be interested, or where either of the parties may be connected with the judge, either by affinity or consanguinity, within such a degree as may be prescribed by law, or when the judge shall have been counsel in the case.
- Section 21.005 of the Government Code. A judge or a justice of the peace may not sit in a case if either of the parties is related to him by affinity or consanguinity within the third degree.
- Article 30.01 of the Code of Criminal Procedure. No judge or justice of the peace shall sit in any case where he may be the party injured, or where he has been counsel for the State or the accused, or where the accused or the party injured may be connected with him by consanguinity or affinity within the third degree, as determined under Chapter 573 of the Government Code.

Thus, disqualification is required in a criminal case if the accused or the plaintiff is related to the judge by consanguinity or affinity within the third degree. *Black's Law Dictionary* defines consanguinity to mean "blood relationship; the connection of persons descended from the same

stock or common ancestor.” Affinity means “relation which one spouse because of marriage has to blood relatives of the other.” *Appendix B* includes a graphical representation of those relations within the third degree.

Canon 3B(2) requires judges to be faithful to the law and to maintain professional competence in it. Likewise, clerks should be conscientious in learning about the law that governs ministerial duties and court procedures. They should maintain professional competence by attending regular judicial education seminars for court support personnel.

Canon 3B(3) requires the judge to maintain order and decorum in proceedings. Clerks may help by informing participants in court proceedings about proper conduct. The court may want to develop a pamphlet or informational handout of dos and don’ts on courtroom behavior to distribute to court participants.

Canon 3B(4) requires the judge to “be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others... and should require similar conduct of... staff.” The conduct of the staff reflects the attitude of the court toward court participants. Being patient, dignified, and courteous lets defendants know that the court is impartial and fair. Sometimes this may be hard to do when defendants are being difficult because they are emotional or fearful of the judicial process. Having a handout about court procedures, understanding that this is a stressful situation for citizens, remaining calm, and handling the defendant patiently and courteously helps citizens get through the process and maintain confidence in the judicial system. Trial judges have been sanctioned for non-verbal expressions of bias against a party and for yelling at attorneys.

Canon 3B(6) specifically lists many of the groups that one must be careful not to show bias or prejudice towards. Remember that clerks represent the court system to the public. If a witness, defendant, victim, attorney, or other user of the court perceives that a court employee is biased against certain types of persons based on their characteristics, that person may assume that the entire system is biased and unfair.

Bias and discrimination can be overt (in the open) or covert (hidden). Treating persons of one racial group rudely is an example of improper overt behavior. Holding certain assumptions about individuals based on race, sex, religion, or other characteristics, and letting these assumptions influence the way one reacts to those individuals is covert bias. The clerk should balance neutrality with sensitivity for the needs and mental states of persons appearing in court. Determining the needs of persons with disabilities, language barriers, and mental illness and victims in family violence cases, for example, should be evaluated on a case-by-case basis.

Canon 3B(9) requires judges to be prompt, efficient, and fair in all judicial matters. The actions of the clerk have a great impact on the judge’s administration of justice because administrative functions of the clerk’s office often determine how efficiently cases progress through the judicial system. The case *Chapman v. Evans*, 744 S.W.2d 133 (Tex. Crim. App. 1988), highlights the importance of why the court must efficiently manage cases. The Court of Criminal Appeals held that “the primary burden is on the prosecution and the courts to ensure that defendants are speedily brought to trial... Both the trial court and prosecution are under a positive duty to prevent unreasonable delay... Over-crowded trial dockets alone cannot justify the diminution of the criminal defendant’s right to a speedy trial.” To efficiently manage the workload of the court, clerks should be knowledgeable of court procedures and processes, records management, financial management, and office management. Clerks and judges together should develop an operations

and procedures manual for the court to increase efficiency and give clerks guidance on how to manage office functions.

Canon 3B(10) provides that neither the judge nor the clerk shall make comments about cases pending before the court. Commenting would make it appear to the public that a decision has already been made about the case before the judge heard the evidence and arguments. In addition, neither can make comments about a case on appeal. When controversial cases appear in court, there may be public criticism of the court's handling of the case. It must be accepted silently or handled by the city's public information department or public officials not in the judicial branch. Although clerks and judges may not comment on cases, they can explain court procedures.

Canon 3C(1) requires judges to diligently and promptly discharge administrative responsibilities and to cooperate with other judges and court officials in the administration of court business. Hence, judges and clerks should work together to ensure that cases, all processing, and the management of the day-to-day operations of the court are proper, effective, and prompt.

Canon 3C(2) provides that judges require court staff to observe the standards of fidelity and diligence that apply to the judge. Fidelity means a quality or state of being faithful and accurate in details. Diligence is steady, earnest, and energetic application and effort. In other words, the *Code of Judicial Conduct* requires a persevering and faithful application of the canons and the law.

Canon 3C(5) requires judges to comply with Rule 12 of the Rules of Judicial Administration and provides that failure to do so would be a violation of the *Code of Judicial Conduct*. Rule 12 concerns judicial records and provides which judicial records are open to public review and which records are exceptions. The text of Rule 12 can be found online at www.tmcec.com/Programs/Judges/Rule_12.

True or False

25. A municipal judge has a duty to take some action against another judge who is violating the *Code of Judicial Conduct*. ____
26. A municipal court clerk should, but is not required under the *Code of Judicial Conduct* to, report to his or her judge unethical conduct of another court employee. ____
27. A municipal judge should report an attorney who presented false evidence to the court. ____
28. A judge would be disqualified from hearing her brother's speeding ticket because they are related by consanguinity within the second degree. ____
29. A judge should not hear her husband's speeding ticket because they are related by affinity within the first degree. ____
30. A municipal court clerk may use racial epithets to refer to witnesses. ____
31. A municipal court administrator may participate in a trip paid for by an attorney who practices before a municipal judge for whom the clerk works. ____
32. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)
____ Informing defendants how to properly conduct themselves in court.
____ Shouting at a belligerent defendant.
____ Telling sexual or racial jokes to jurors while they are waiting to be called into the courtroom.
____ Not explaining all the court options to members of a certain ethnic group.

- ___ Responding to a news reporter who asks you to review an article for legal accuracy. It contains information about a Class C misdemeanor assault that is pending in your court and is part of a larger civil suit for sexual harassment.
- ___ Developing a records management program to help the court manage the progress of the cases through the court.
- ___ Working with the judge to oversee the administration of the court.
- ___ Providing information requested under Rule 12.

Canon 4: Conducting the Judge's Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations (in part)

A. Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or
- (2) interfere with the proper performance of judicial duties.

B. Activities to Improve the Law. A judge may:

- (1) speak, write, lecture, teach, and participate in extra-judicial activities concerning the law, the legal system, the administration of justice, and non-legal subjects, subject to the requirements of this code; and,
- (2) serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment but should not personally participate in public fund-raising activities. He or she may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

C. Civic or Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the profit of its members, subject to the following limitations:

- (1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly or frequently engaged in adversary proceedings in any court.
- (2) A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization but may be listed as an officer, director, delegate, or trustee of such an organization and may be a speaker or a guest of honor at an organization's fund-raising events.
- (3) A judge should not give investment advice to such an organization but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

D. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves. This limitation does not prohibit either a judge or candidate from soliciting funds for appropriate campaign or office holder expenses as permitted by law.

Note: Municipal judges do not have to comply with Canon 4D(2) or 4D(3).

(4) Neither a judge nor a family member residing in the judge's household shall accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to the judge; books and other resource materials supplied by publishers on a complimentary basis for official use; or an invitation to the judge and spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a family member residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a gift from a friend for a special occasion such as a wedding, engagement, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a family member residing in the judge's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or person whose interests have come or are likely to come before the judge;

(d) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other family member residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and judge, provided the gift, award, or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.

Note: Municipal judges do not have to comply with Canon 4E (Fiduciary Duties).

Note: Municipal judges do not have to comply with Canon 4F (Service as Arbitrator or Mediator) unless the court on which the judge serves may have jurisdiction of the matter or parties involved in the arbitration or mediation.

Note: A municipal judge does not have to comply with Canon 4G (Practice of Law) except: An attorney judge shall not practice law in the court on which he or she serves or in a proceeding in which he or she has served as a judge or in any proceeding related to a proceeding in which he or she has served as a judge.

Note: Municipal court judges do not have to comply with Canon 4H: Extra-Judicial Appointments.

I. Compensation, Reimbursement, and Reporting.

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount, nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's family. Any payment in excess of such an amount is compensation.

(2) Public Reports. A judge shall file financial and other reports as required by law.

This canon provides guidance on judges' activities and avoiding impropriety in their activities, including civic, charitable, and community events. The prestige of the court should never be used for fundraising or to promote membership in organizations that the judge or clerk supports. Examples of improper conduct are shown below:

- The court's letterhead may not be used to promote charitable activities, personal financial matters, or the private interests of others.
- No member of the court staff or his or her immediate family may accept any gift, bequest, favor, or loan if the donor is a party or person whose interests have come or are likely to come before the court.
- The judge or any member of the court staff may not solicit funds for any educational, religious, charitable, fraternal, or civic organizations. For example, clerks should not sell candy or other products for their children to raise money for such things as church fundraisers, school band, girl scouts, or boy scouts at the court.

Permitted Activities:

- receiving a gift incidental to a public testimonial;
- receiving books or other material supplied by publishers on a complimentary basis for official use;
- accepting ordinary social hospitality;
- accepting a gift, bequest, favor, or loan from a relative;
- accepting a gift from a friend for a special occasion such as a wedding, engagement, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship; and
- accepting free passes to movies, football games, college plays, etc., only if the gift is from an entity whose interests have not come and are not likely to come before the judge, and if it is clearly understood that the gift is not an effort to seek a favor.

The following checklist of questions helps judges and clerks to reflect on the requirement of maintaining impartiality and avoiding impropriety.

- Does the activity reflect adversely on the impartiality of the court?
- Does the activity detract from the dignity of the office?

- Does the activity involve considerable controversy?
- Does the activity have the appearance of improper political endorsement?
- Does the activity involve membership or leadership in an organization that frequently comes before the court?
- Does the activity involve the use of the prestige of the judicial office to promote the private interest of others?
- Is the judicial office being used for fund-raising or membership solicitation?
- Does the activity involve membership in an organization that illegally discriminates?
- Will the proposed activity or involvement interfere with the proper performance of judicial or ministerial duties?

33. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)
- ___ Writing a weekly column with the judge about legal matters and court activity for the local newspaper.
 - ___ Teaching classes for the Texas Municipal Courts Education Center.
 - ___ Speaking to high school students in a government class on “Your Rights in Traffic Court.”
 - ___ Selling tickets for your daughter’s booster club to a group taking a driving safety course.
 - ___ Traveling free to Las Vegas on a law firm’s private plane. The law firm frequently handles traffic tickets in your court.
 - ___ Accepting gifts from a friend or a relative on special occasions when the friend or relative is not before the court.
 - ___ Accepting free legal publications from TMCEC.
 - ___ Accepting an invitation to a Christmas party that is being conducted by a company that has a pending case in your court.
 - ___ Using court stationery to write a letter to a company that has failed to provide you with promised service.
 - ___ Having your title as court clerk listed by your name on a letter being sent by a local charity organization that is soliciting toys for disadvantaged children.

Canon 5: Refraining from Inappropriate Political Activity (in part)

(1) A judge or judicial candidate shall not:

- (i) make pledges or promises of conduct in office regarding pending or impending cases, specific classes of cases, specific classes of litigants, or specific propositions of law that would suggest to a reasonable person that the judge is predisposed to a probable decision in cases within the scope of the pledge;
- (ii) knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent; or
- (iii) make a statement that would violate Canon 3B(10).

(2) A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political

party. A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this canon and Canon 3B(10).

Note: Municipal judges do not have to comply with Canon 5(3).

(4) A judge or judicial candidate subject to the Judicial Campaign Fairness Act...shall not knowingly commit an act for which he or she knows the Act imposes a penalty...

While political activism is a right of citizens, clerks must be careful not to use the courthouse as a forum for their political ideas. Wearing or displaying political buttons and stickers or allowing a candidate to place political brochures or advertisements in the court can lead to the actual or apparent loss of independence. Ethics Opinion 234 says “The code does not prohibit political activities by the administrator, provided that [he or] she engages in them away from the courthouse, during non-court hours, on [his or] her own time, and without giving the impression that [he or] she speaks for the judge. The administrator must remember that the judge for whom [he or] she works cannot lend the prestige of his office to advance... political interest.”

34. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)
- ☐ Making public statements in the local restaurant about persons running for city council.
 - ☐ Commenting privately to your spouse as to whom would be the best candidate for mayor.
 - ☐ Wearing political T-shirts and buttons for local political races while at work.
 - ☐ Talking to defendants about who will be the best candidate for mayor.

Canon 6: Compliance with the Code of Judicial Conduct (in part)

Note: The text of Canon 6, Sections A, B, and D through G are not included here.

Canon 6C: Justices of the Peace and Municipal Court Judges.

(1) A justice of the peace or municipal court judge shall comply with all provisions of this code, except the judge is not required to comply:

- (a) with Canon 3B(8) pertaining to ex parte communications; in lieu thereof a justice of the peace or municipal court judge shall comply with 6C(2) below;
- (b) with Canons 4D(2), 4D(3), 4E, or 4H;
- (c) with Canon 4F, unless the court on which the judge serves may have jurisdiction of matter or parties involved in the arbitration or mediation; or
- (d) if an attorney, with Canon 4G, except practicing law in the court on which he or she serves or acting as a lawyer in proceeding in which he or she has served as a judge or in any proceeding related thereto.
- (e) with Canon 5(3).

(2) A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider ex parte or other communications concerning the merits of a pending judicial proceeding. This subsection does not prohibit communications concerning:

- (a) uncontested administrative matters,
- (b) uncontested procedural matters,
- (c) magistrate duties and functions,
- (d) determining where jurisdiction of an impending claim or dispute may lie,
- (e) determining whether a claim or dispute might more appropriately be resolved in some other judicial or non-judicial forum,
- (f) mitigating circumstances following a plea of nolo contendere or guilty for a fine-only offense, or
- (g) any other matters where ex parte communications are contemplated or authorized by law.

Canon 6H: Attorneys.

Any lawyer who contributes to the violation of Canons 3B(7), 3B(10), 4D(4), 5, or 6C(2), or other relevant provisions of this code, is subject to disciplinary action by the State Bar of Texas.

Ex parte communication includes any communication to the judge involving less than all parties who have a legal interest in a pending case. It may be oral or written. For example, judges are prohibited from engaging in the following conduct:

- meeting with either the prosecutor or defense to privately discuss the merits of a pending case;
- personally investigating the facts of a case, for example: driving by the scene of the collision before the case is heard (or sending the clerk to the scene);
- talking with a defendant on the telephone about the merits of the defendant's case;
- dismissing a ticket without a hearing and a prosecutor's motion because it is an old friend;
- hearing the defendant's side of the story privately outside of trial;
- reading correspondence from defendants who write to the judge to tell their side of the story; or
- reading an officer's notes on the back of a citation.

The clerk is often in a role to protect the judge from ex parte communication by screening the mail and telephone calls. Also, clerks may not initiate ex parte communication with defendants or their attorneys. If a defendant blurts out information about the case, clerks must not pass it along to the judge. The public does not always understand that a judge cannot talk to one side without the other side being present. Clerks must remember that Canon 3B(4) requires clerks to be courteous, patient, and dignified with defendants.

Clerks should talk with their judges to establish a policy and procedure for assisting defendants who do not understand the problems with ex parte communication without giving the impression that they cannot go before a judge. The court may want to establish a plea docket for those defendants who want to plead guilty or no contest but want to talk to the judge. When judges review case files, clerks should not tag correspondence to the file that presents evidence. If a judge

does not have a clerk and must see the public and answer the telephone, he or she should immediately tell citizens that he or she cannot hear the facts of the case except at trial.

True or False

35. When a citizen wants to file a case and the clerk is unsure whether the municipal court has jurisdiction, the judge may talk to the person to see if the case should be filed in municipal court. ____
36. A judge may talk with a person who wants to file a claim in municipal court for restitution for \$700 for a fence that was damaged by a vehicle that lost control and drove through it. ____
37. A letter to the judge from a defendant telling the defendant's side of his or her case is not considered ex parte communication. ____
38. The officer's notes on the back of a citation are not considered ex parte communication. ____
39. A judge may talk with a defendant on the telephone about his or her case, because a telephone conversation is not an official court appearance. ____
40. It is not ex parte communication to tell the judge about a death threat made by a defendant to the victim. ____
41. It is not ex parte communication to inform the judge about information from a defendant relating to the defendant's case pending in the court. ____

Practice Note

Court clerks have likely heard a defendant state something along the lines of, "I just have one question for the judge." However, once the defendant sees the judge, the defendant may attempt to explain what happened. When screening whom a judge sees, clerks should know that a defendant who is not contesting the case but is pleading guilty or nolo contendere may talk to the judge about mitigating circumstances after the plea. Canon 6C(2) does not prohibit communications concerning uncontested administrative or procedural matters. Remember that defendants or persons wishing to file a case or discuss the facts of the case following a not guilty plea should be referred to the prosecutor.

Canon 7: Effective Date of Compliance

A person to whom this code becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it.

Canon 8: Construction and Terminology of the Code

A. Construction.

The Code of Judicial Conduct is intended to establish basic standards for ethical conduct of judges. It consists of specific rules set forth in Sections under broad captions called canons.

The sections are rules of reason, which should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law and in the context of all relevant circumstances. The code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office to provide a structure for regulating conduct through the State Commission on Judicial Conduct. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the code would be subverted if the code were invoked by lawyers for mere tactical advantage in a proceeding.

It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate and the degree of discipline to be imposed should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

B. Terminology. (in part)

Note: Not all terms are included here.

(1) “Shall” and “shall not” denotes binding obligations the violation of which can result in disciplinary action.

(2) “Should” or “should not” relates to aspirational goals and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined.

(3) “May” denotes permissible discretion or, depending on the context, refers to action that is not covered by specific proscriptions.

(7) “Knowingly,” “knowledge,” “known,” or “knows,” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

(8) “Law” denotes court rules as well as statutes, constitutional provisions, and decisional law.

(9) “Member of the judge’s (or the candidate’s) family” denotes a spouse, child, grandchild, parent, grandparents, or other relative or person with whom the candidate maintains a close familial relationship.

(10) “Family member residing in the judge’s household” means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge’s family, who resides at the judge’s household.

(11) “Require.” The rules prescribing that a judge “require” certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term “require” in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control.

(12) “Third degree of relationship.” The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, or niece.

True or False

42. If a canon says a judge shall or shall not conduct him or herself in a certain manner, the judge does not have discretion in that matter. ____
43. “May” means that the judge has permissible discretion. ____
44. If a rule requires certain conduct of others, the judge must exercise reasonable direction and control over the conduct of anyone who is subject to the judge’s direction and control. ____

PART 5

LEGAL ADVICE V. LEGAL INFORMATION

Clerks are frequently asked by defendants, victims, attorneys, news media, and other court users about how the court works. Clerks must be careful, however, not to give legal advice. The clerks’ role is to explain procedures and not give advice on the best way to use the court processes. There are several reasons why clerks should not give legal advice.

- Giving legal advice if not a licensed attorney is prohibited as the unauthorized practice of law and may subject the person to criminal charges or liability.
- Giving such advice might advantage the person(s) and compromise the court’s impartiality.
- The advice could be incorrect or damaging.
- The clerk may wrongfully assume a judicial, rather than ministerial, function.

Some guidelines to help ensure that clerks are giving only legal information and not legal advice are shown below.

- Only explain court processes and procedures.
- Establish a procedure with the judge to release information requested by the public.
- Answer questions concerning deadlines or due dates.
- Do not advise citizens on how to bring their problems before the court or what remedies to seek.
- Have a procedures pamphlet available that explains the court processes and the defendants’ obligations and rights in the process.
- Never give information for the purpose of giving one party an advantage over the other. Remember the absolute duty of impartiality.
- Avoid advising a defendant who asks the question “Do you think I should see the judge?” Instead, explain court processes and procedures and inform the person how to properly bring his or her problems before the court for resolution.
- Avoid helping defendants complete their legal forms, as this assistance is considered legal advice (i.e., avoid assisting with appeal bond forms).

- Have a procedure for handling persons who want to communicate improperly with the judge to present their side of the case before a trial. Such communication is called *ex parte* and is prohibited by the *Code of Judicial Conduct*.
- Contact the city prosecutor so that he or she may decide how to handle a case if there is an error on the citation or complaint.

The Office of Court Administration has an excellent article on distinguishing legal advice from legal information. This article is reprinted in *Appendix C* with permission.

True or False

45. A clerk may give legal advice if he or she is certain that the advice is correct. ____
46. If a clerk gives legal advice, it may compromise the impartiality of the court. ____
47. If a court provides a sample form to a defendant, the court is obligated to assist that defendant to complete the form. ____
48. If a clerk determines that there is an error on a traffic citation, the clerk should tell the judge so that the judge can dismiss the case. ____
49. What may a clerk do when a defendant is unsure how to handle his or her case? _____

PART 6

PENAL OFFENSES AND OTHER RELEVANT CODES

This section of the study guide includes excerpts from the Penal Code, Title 8: Offenses Against Public Administration (Chapters 36-39) and provisions from the Government Code, which deal with official misconduct and nepotism prohibitions. Only the most relevant portions of the law are included here.

A. Penal Code Offenses

Selected Definitions: Section 1.07

(a) In this code:

(38) “Person” means an individual or a corporation, association, limited liability company, or other entity or organization governed by the Business Organizations Code.

(41) “Public servant” means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:

(A) an officer, employee, or agent of government;

(B) a juror or grand juror; or

(C) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; or

(D) an attorney at law or notary public when participating in the performance of a governmental function; or

(E) a candidate for nomination or election to public office; or

(F) a person who is performing a governmental function under a claim or right although he or she is not legally qualified to do so.

True or False

- 50. A municipal court clerk is a public servant. ____
- 51. A deputy court clerk is a public servant. ____
- 52. A part-time employee of the court is a public servant. ____
- 53. Municipal court jurors are public servants. ____
- 54. An attorney representing the State in a municipal court is not a public servant. ____
- 55. A bailiff is not a public servant. ____

1. Chapter 36, Bribery and Corrupt Influence

Section 36.01: Definitions (in part)

In this chapter:

(3) “Benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any person in whose welfare the beneficiary has a direct and substantial interest.

Section 36.02: Bribery

(a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another or solicits, accepts, or agrees to accept from another:

(1) any benefit as consideration for the recipient’s decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(2) any benefit as consideration for the recipient’s decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding;

(3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official; or

(4) any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual inferences in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this subdivision.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he or she had not yet assumed office, or he or she lacked jurisdiction or for any other reason.

(c) It is no defense to prosecution under this section that the benefit is not offered or conferred or that the benefit is not solicited or accepted until after:

(1) the decision, opinion, recommendation, vote, or other exercise of discretion has occurred; or

(2) the public servant ceases to be a public servant.

(d) It is an exception to the application of Subdivisions (1), (2), and (3) of Subsection (a) that the benefit is a political contribution as defined by Title 15, Election Code or an expenditure made and reported in accordance with Chapter 305, Government Code.

(e) An offense under this section is a felony of the second degree.

Section 36.07: Acceptance of Honorarium

(a) A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties.

(b) This section does not prohibit a public servant from accepting transportation and lodging expenses in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory, or from accepting meals in connection with such an event.

(b-1) Transportation, lodging, and meals described by Subsection (b) are not political contributions as defined by Title 15, Election Code.

(c) An offense under this section is a Class A misdemeanor.

Section 36.08: Gift to Public Servant by Person Subject to His Jurisdiction (in part)

(e) A public servant who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested or likely to become interested in any matter before the public servant or tribunal.

(h) An offense under this section is a Class A misdemeanor.

(i) A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

Section 36.10 exempts certain gifts and benefits. The prohibition in Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) does not apply to:

- a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant;
- a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;
- an item with a value of less than \$50, excluding cash or a negotiable instrument as described by Section 3.104, Business and Commerce Code;
- an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by governmental entity; or
- transportation, lodging, and meals described by Section 36.07(b).

True or False

56. A municipal court clerk violates Section 36.02 of the Penal Code when he or she accepts money from a citizen to destroy, conceal, or remove traffic citations from the court files even though the clerk never did destroy, conceal, or remove the citations. ____
57. A municipal court clerk may accept payment for making a speech that he or she has been asked to make because he or she is a court clerk. ____
58. A municipal court clerk may accept food, transportation, and lodging from an organization for whom he or she is making a speech. ____
59. A municipal judge or clerk may accept free tickets to a college football game from the dean of a private college that is in the city where the municipal judge's court is located. ____
60. A municipal court clerk may accept gifts from his or her mother. ____

2. Chapter 37, Perjury and Other Falsification

Section 37.01: Definitions (in part)

In this chapter:

(2) "Governmental record" means:

- (A) anything belonging to, received by, or kept by government for information, including a court record;
- (B) anything required by law to be kept by others for information of government;
- (C) a license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, by the United States, or by a foreign government engaged in a reciprocal treaty or memorandum of understanding with the United States;
- (D) a standard proof of motor vehicle liability insurance form described by Section 601.081, Transportation Code, a certificate of an insurance company described by Section 601.083 of that code, a document purporting to be such a form or certificate that is not issued by an insurer authorized to write motor vehicle liability insurance in this state, an electronic submission in a form described by Section 502.046(i), Transportation Code, or an evidence of financial responsibility described by Section 601.053 of that code; or

- (E) an official ballot or other election record;
 - (F) the written documentation a mobile food unit is required to obtain under Section 437.0074, Health and Safety Code; or
 - (G) a temporary tag issued under Chapter 502 or 503, Transportation Code.
- (3) “Statement” means any representation of fact.

Section 37.10: Tampering with Governmental Record

- (a) A person commits an offense if he:
- (1) knowingly makes a false entry in, or false alteration of, a governmental record;
 - (2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;
 - (3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;
 - (4) possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully;
 - (5) makes, presents, or uses a governmental record with knowledge of its falsity; or
 - (6) possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.
- (b) It is an exception to the application of Subsection (a)(3) that the governmental record is destroyed pursuant to legal authorization or transferred under Section 441.204, Government Code. With regard to the destruction of a local government record, legal authorization includes compliance with the provisions of Subtitle C, Title 6, Local Government Code.
- (c)(1) Except as provided by Subdivisions (2), (3), and (4) and by Subsection (d), an offense under this section is a Class A misdemeanor unless the actor’s intent is to defraud or harm another, in which event the offense is a state jail felony.
- (2) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the governmental record was:
- (A) a public school record, report, or assessment instrument required under Chapter 39, Education Code, data reported for a school district or open-enrollment charter school to the Texas Education Agency...or was a license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, or by the United States, unless the actor’s intent is to defraud or harm another, in which event the offense is a felony of the second degree;
 - (B) a written report of a medical, chemical, toxicological, ballistic, or other expert examination or test performed on physical evidence for the purpose of determining the connection or relevance of the evidence to a criminal action; or
 - (C) a written report of the certification, inspection, or maintenance record of an instrument, apparatus, implement, machine, or other similar device used in the

course of an examination or test performed on physical evidence for the purpose of determining the connection or relevance of the evidence to a criminal action.

- (3) An offense under this section is a Class C misdemeanor if it is shown on the trial of the offense that the governmental record is a government record that is required for enrollment of a student in a school district and was used by the actor to establish the residency of the student.
- (4) An offense under this section is a Class B misdemeanor if it is shown on the trial of the offense that the governmental record is a written appraisal filed with an appraisal review board... that was performed by a person who had a contingency interest in the outcome of the appraisal review board hearing.
- (5) An offense under this section is a Class B misdemeanor if the governmental record is an application for a place on the ballot under Section 141.031, Election Code, and the actor knowingly provides false information under Subsection (a)(4)(G) of that section.
- (6) An offense under this section is a Class A misdemeanor if the governmental record is a temporary tag issued under Chapter 502 or 503, Transportation Code.
- (d) An offense under this section, if it is shown on the trial of the offense that the governmental record is described by Section 37.01(2)(D), is:
 - (1) a Class B misdemeanor if the offense is committed under Subsection (a)(2) or Subsection (a)(5) and the defendant is convicted of presenting or using the record;
 - (2) a felony of the third degree if the offense is committed under:
 - (A) Subsection (a)(1), (3), (4), or (6); or
 - (B) Subsection (a)(2) or (5) and the defendant is convicted of making the record; and
 - (3) a felony of the second degree, notwithstanding Subdivisions (1) and (2), if the actor's intent in committing the offense was to defraud or harm another.
- (e) It is an affirmative defense to prosecution for possession under Subsection (a)(6) that the possession occurred in the actual discharge of official duties as a public servant.
- (f) It is a defense to prosecution under Subsection (a)(1), (a)(2), or (a)(5) that the false entry or false information could have no effect on the government's purpose for requiring the government record.
- (g) A person is presumed to intend to defraud or harm another if the person acts with respect to two or more of the same type of governmental records or blank governmental record forms and if each governmental record or blank governmental record form is a license, certificate, permit, seal, title, or similar document issued by government.
- (h) If conduct that constitutes an offense under this section also constitutes an offense under Section 32.48 (Simulating Legal Process) or 37.13 (Record of a Fraudulent Court), the actor may be prosecuted under any of those sections.

(i) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

(j) It is not a defense to prosecution under Subsection (a)(2) that the record, document, or thing made, presented, or used displays or contains the statement “NOT A GOVERNMENT DOCUMENT” or another substantially similar statement intended to alert a person to the falsity of the record, document, or thing, unless the record, document, or thing displays the statement diagonally printed clearly and indelibly on both the front and back of the record, document, or thing in solid red capital letters at least one-fourth inch in height.

True or False

61. Municipal court complaints are governmental records. ____
62. Correspondence received from the defendant is a governmental record. ____
63. The Office of Court Administration’s monthly reports are governmental records. ____
64. Copies of state reports retained by the court are governmental records. ____
65. A municipal court clerk is in violation of Section 37.10, Tampering with a Government Record, if he or she types a false statement in an arrest warrant before giving it to the judge to sign. ____
66. A municipal court clerk is in violation of Section 37.10, Tampering with a Government Record, if he or she erases and corrects a mistake he or she made in entering information on a docket. ____

3. Chapter 38, Obstructing Governmental Operation

Section 38.122: Falsely Holding Oneself Out as a Lawyer

(a) A person commits an offense if, with intent to obtain an economic benefit for himself or herself, the person holds himself or herself out as a lawyer, unless he or she is currently licensed to practice law in this state, another state, or a foreign country and is in good standing with the State Bar of Texas and the state bar or licensing authority of any and all other states and foreign countries where licensed.

(b) An offense under Subsection (a) of this section is a felony of the third degree.

(c) Final conviction of falsely holding oneself out to be a lawyer is a serious crime for all purposes and acts, specifically including the State Bar Rules.

Section 38.123: Unauthorized Practice of Law

(a) A person commits an offense if, with intent to obtain an economic benefit for himself or herself, the person:

- (1) contracts with any person to represent that person with regard to personal causes of action for property damages or personal injury;

- (2) advises any person as to the person's rights and the advisability of making claims for personal injuries or property damages;
 - (3) advises any person as to whether or not to accept an offered sum of money in settlement of claims for personal injuries or property damages;
 - (4) enters into any contract with another person to represent that person in personal injury or property damage matters on a contingent fee basis with an attempted assignment of a portion of the person's cause of action; or
 - (5) enters into a contract with a third person which purports to grant the exclusive right to select and retain legal counsel to represent the individual in any legal proceeding.
- (b) This section does not apply to a person currently licensed to practice law in this state, another state, or a foreign country and in good standing with the State Bar of Texas and the state bar or licensing authority of any and all other states and foreign countries where licensed.
- (c) Except as provided by Subsection (d) of this section, an offense under Subsection (a) of this section is a Class A misdemeanor.
- (d) An offense under Subsection (a) of this section is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under Subsection (a) of this section.

4. Chapter 39, Abuse of Office

Section 39.01: Definitions (in part)

In this chapter:

- (1) "Law relating to a public servant's office or employment" means a law that specifically applies to a person acting in the capacity of a public servant that directly or indirectly:
 - (A) imposes a duty on the public servant; or
 - (B) governs the conduct of the public servant.
- (2) "Misuse" means to deal with property contrary to:
 - (A) an agreement under which the public servant holds the property;
 - (B) a contract of employment or oath of office of the public servant;
 - (C) a law, including provisions of the General Appropriations Act specifically related to government property, that prescribes the manner of custody or disposition of the property; or
 - (D) a limited purpose for which the property is delivered or received.

Section 39.02: Abuse of Official Capacity (in part)

- (a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:
 - (1) violates a law relating to the public servant's office or employment; or

- (2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.
- (b) An offense under Subsection (a)(1) is a Class A misdemeanor.
- (c) An offense under Subsection (a)(2) is:
- (1) a Class C misdemeanor if the value of the use of the thing misused is less than \$100;
 - (2) a Class B misdemeanor if the value of the use of the thing misused is \$100 or more but less than \$750;
 - (3) a Class A misdemeanor if the value of the use of the thing misused is \$750 or more but less than \$2,500;
 - (4) a state jail felony if the value of the use of the thing misused is \$2,500 or more but less than \$30,000;
 - (5) a felony of the third degree if the value of the use of the thing misused is \$30,000 or more but less than \$150,000;
 - (6) a felony of the second degree if the value of the use of the thing misused is \$150,000 or more but less than \$300,000; or
 - (7) a felony of the first degree if the value of the use of the thing misused is \$300,000 or more.
- (d) A discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons, are not things of value belonging to the government for purposes of this section due to the administrative difficulty and cost involved in recapturing the discount or award for a governmental entity.

Section 39.03: Official Oppression

- (a) A public servant acting under color of his office or employment commits an offense if he:
- (1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;
 - (2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful; or
 - (3) intentionally subjects another to sexual harassment.
- (b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.
- (c) In this section, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.
- (d) An offense under this section is a Class A misdemeanor, except that an offense is a felony of the third degree if the public servant acted with the intent to impair the accuracy

of data reported to the Texas Education Agency through the Public Education Information Management System...

Section 39.06: Misuse of Official Information

(a) A public servant commits an offense if, in reliance on information to which the public servant has access by virtue of the person's office or employment and that has not been made public, the person:

- (1) acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;
- (2) speculates or aids another to speculate on the basis of the information; or
- (3) as a public servant, including as a school administrator, coerces another into suppressing or failing to report that information to a law enforcement agency.

(b) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he discloses or uses information for a nongovernmental purpose that:

- (1) he has access to by means of his or her office or employment; and
- (2) has not been made public.

(c) A person commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he solicits or receives from a public servant information that:

- (1) the public servant has access to by means of his office or employment; and
- (2) has not been made public.

(d) In this section, "information that has not been made public" means any information to which the public does not generally have access, and that is prohibited from disclosure under Chapter 552, Government Code.

(e) Except as provided by Subsection (f), an offense under this section is a felony of the third degree.

(f) An offense under Subsection (a)(3) is a Class C misdemeanor.

True or False

67. The *Code of Judicial Conduct* is a law relating to a public servant's office or employment. _____
68. The Code of Criminal Procedure is a law relating to a public servant's office or employment. _____
69. A municipal judge or clerk may use a car furnished by the city for a vacation trip. _____
70. A municipal judge may use a city telephone to make local personal telephone calls. _____
71. A municipal court clerk may use court letterhead to write a cover letter for an application for a job for which the clerk is applying. _____
72. A municipal court clerk may use court letterhead to write a recommendation for a deputy court clerk seeking another job. _____

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|-----|--|
| 73. | A municipal judge may make a court clerk address the judge's Christmas cards for him or her during the clerk's workday. ____ |
| 74. | A municipal judge may make listening to his or her dirty jokes a condition of employment for a court clerk. ____ |
| 75. | A municipal court clerk who learns in a city staff meeting that the city wants to acquire a certain piece of property for a park may pass that information on to a friend who is a real estate agent. ____ |

B. Government Code, Chapter 573 – Nepotism Provisions

A chart showing consanguinity and affinity relationships can be found in Appendix A.

1. Public Officials

Section 573.001: Definitions (in part)

In this chapter:

- (2) "Position" includes an office, clerkship, employment, or duty.
- (3) "Public official" means:
 - (A) an officer of this state or of a district, county, municipality, precinct, school district, or other political subdivision of this state;
 - (B) an officer or member of a board of this state or of a district, county, municipality, school district, or other political subdivision of this state; or
 - (C) a judge of a court created by or under a statute of this state.

2. Consanguinity and Affinity

Section 573.022: Determination of Consanguinity (Blood Relationships)

- (a) Two individuals are related to each other by consanguinity if:
 - (1) one is a descendant of the other; or
 - (2) they share a common ancestor.
- (b) An adopted child is considered to be a child of the adoptive parent for this purpose.

Section 573.023: Computation of Degree of Consanguinity (Blood Relatives)

- (a) The degree of relationship by consanguinity between an individual and the individual's descendant is determined by the number of generations that separate them. A parent and child are in the first degree, a grandparent and grandchild in the second degree, a great-grandparent and great-grandchild in the third degree and so on.
- (b) If an individual and the individual's relative are related by consanguinity, but neither is descended from the other, the degree of relationship is determined by adding:

- (1) the number of generations between the individual and the nearest common ancestor of the individual and the individual's relative; and
 - (2) the number of generations between the relative and the nearest common ancestor.
- (c) An individual's relatives within the third degree by consanguinity are the individual's:
- (1) parent or child (relatives in the first degree);
 - (2) brother, sister, grandparent, or grandchild (relatives in the second degree); and
 - (3) great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).

True or False

- 76. A public official includes a judge of a court created by or under a statute of this State. ____
- 77. A parent and her child are related by consanguinity. ____
- 78. A parent and his adopted child have a degree of consanguinity between them. ____
- 79. Who are a municipal judge's relatives within the first degree by blood? _____

- 80. Who are a municipal judge's relatives within the second degree by blood? _____

- 81. Who are a municipal judge's relatives within the third degree by blood? _____

- 82. List your own living relatives within the third degree by consanguinity. _____

Section 573.024: Determination of Affinity (Relationship by Marriage)

- (a) Two individuals are related to each other by affinity if:
- (1) they are married to each other; or
 - (2) the spouse of one of the individuals is related by consanguinity to the other individual.
- (b) The ending of a marriage by divorce or death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

- 83. Is a municipal court clerk's spouse related to him or to her by consanguinity or by affinity? _____
- 84. Is a municipal court clerk's spouse's sister related to the clerk by consanguinity or by affinity? _____

85. If the municipal judge's spouse dies and the municipal judge has no living children, how is the dead spouse's sister related to the municipal judge? _____

Section 573.025: Computation of Degree of Affinity (Relatives by Marriage)

(a) A husband and wife are related to each other in the first degree by affinity. For other relationships by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity. For example: if two individuals are related to each other in the second degree by consanguinity, the spouse of one of the individuals is related to the other individual in the second degree by affinity.

(b) An individual's relatives within the third degree by affinity are:

(1) anyone related by consanguinity to the individual's spouse in one of the ways named in Section 573.023(c); and

(2) the spouse of anyone related to the individual by consanguinity in one of the ways named in Section 573.023(c).

86. List the municipal judge's relatives within the first degree by marriage. Second degree by marriage. Third degree by marriage. _____

87. List your own living relatives within the third degree by affinity? _____

3. Subchapter C: Nepotism Prohibitions

Section 573.041: Prohibition Applicable to Public Official

A public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds or fees of office if:

(1) the individual is related to the public official within a degree described by Section 573.002; or

(2) the public official holds the appointment or confirmation authority as a member of a state or local board, the legislature, or a court and the individual is related to another member of that board, legislature, or court within a degree described by Section 573.002.

Note that Section 573.041 does not apply to:

- an appointment or employment of a personal attendant by an officer of the state or political subdivision of the state for attendance on the officer who, because of physical infirmities, is required to have a personal attendant; or
- an appointment or employment of a person by a municipality that has a population of less than 200.

Section 573.044: Prohibition Applicable to Trading

A public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position in which the individual's services are under the public official's direction or control and that is to be compensated directly or indirectly from public funds or fees of office if:

- (1) the individual is related to another public official within a degree described by Section 573.002; and
- (2) the appointment, confirmation of the appointment, or vote for appointment or confirmation of the appointment would be carried out in whole or partial consideration for the other public official appointing, confirming the appointment, or voting for the appointment of an individual who is related to the first public official within a degree described by Section 573.002.

Section 573.062: Continuous Employment (in part)

(a) A nepotism prohibition prescribed by Section 573.041 or by a municipal charter or ordinance does not apply to an appointment, confirmation of an appointment, or vote for an appointment or confirmation of an appointment of an individual to a position if:

- (1) the individual is employed in the position immediately before the election or appointment of the public official to whom the individual is related in a prohibited degree; and
- (2) that prior employment of the individual is continuous for at least:
 - (A) 30 days, if the public official is appointed;
 - (B) six months, if the public official is elected at an election other than the general election for state and county officers; or
 - (C) one year, if the public official is elected at the general election for state and county officers.

(b) If, under Subsection (a), an individual continues in a position, the public official to whom the individual is related in a prohibited degree may not participate in any deliberation or voting on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of the individual if that action applies only to the individual and is not taken regarding a bona fide class or category of employees.

Section 573.081: Removal in General (in part)

(a) An individual who violates Subchapter C [Sections 573.041 and 573.044 printed here] or Section 573.062(b) shall be removed from the individual's position...

(b) A removal from a position shall be made immediately and summarily by the original appointing authority if a criminal conviction against the appointee for a violation of Subchapter C or Section 573.062(b) becomes final.

Section 573.083: Withholding Payment of Compensation

A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible individual if the official knows the individual is ineligible.

Section 573.084: Criminal Penalty

(a) An individual commits an offense involving official misconduct if the individual violates Subchapter C [Sections 573.041 and 573.044 printed here] or Sections 573.062(b) or 573.083.

(b) An offense under this section is a misdemeanor punishable by a fine not less than \$100 or more than \$1,000.

True or False

88. A municipal judge may hire his or her spouse's sister as a municipal court clerk. ____
89. A municipal judge may hire his or her brother's daughter to file a backlog of municipal court documents and pay her with the judge's own money. ____
90. The presiding municipal judge may hire the child of a sister of an alternate municipal judge to type the docket sheets. ____
91. A municipal judge may hire the mayor's daughter as a municipal court clerk in exchange for a job as the mayor's secretary for the municipal judge's first cousin. ____
92. A city with a municipal judge who is disabled and uses a wheelchair may hire the judge's daughter to be the judge's aide and pay her out of city funds. ____
93. If a person is about to be appointed municipal court clerk for a city and the prospective clerk's aunt is the city secretary, how long must the aunt have worked in that position to _____ be able to keep her job after the municipal court clerk is appointed?
94. If the municipal court clerk's aunt stays with the city, may the aunt fill out the clerk's merit raise evaluation? ____
95. Generally, the city council has a choice about retaining an appointed municipal court clerk who is convicted of official misconduct in the form of nepotism. ____
96. A violation of the nepotism statute is an offense involving official misconduct. ____
97. What may happen to a municipal judge convicted of hiring his or her niece as a municipal court clerk? _____

PART 7 ETHICAL DILEMMAS

A dilemma is a choice or a situation between equally unsatisfactory alternatives, or a difficult or perplexing situation. Generally, people try to rationalize or deny the wrongness of a situation, or they see what they want to see. Resolution can only be reached if the problem is viewed objectively so that the person can determine the correct course of action.

A. Identifying Ethical Dilemmas

- Identify the issue or problem.
- Determine the kind of problem it really is. Is it an ethical problem or some other issue such as training?
- Break the problem down into workable elements.
- Determine whose problem it is.
- Document any problems and issues, communications, and efforts to resolve the situation.

B. Solving Ethical Dilemmas

- Decide not to overlook the issue. Issues do not go away, and eventually someone may be treated unfairly. Handle the problem immediately.
- Know and understand the *Code of Judicial Conduct* and how it applies to court clerks. Abide by these standards.
- If you have a problem and do not know how to handle it, go to someone who does, or seek outside help from the Commission on Judicial Conduct.
- Do not have the attitude “It’s all or nothing.” Develop more than one resolution to ethical problems.
- Decide whether the choice is one that you can live with.
- Consider others that may be involved in the dilemma. Are there any choices that you know that others cannot live with?
- Realize that communication is the best way to solve most problems.
- Determine if more than one option is available.
- Evaluate the options.
- Select the most workable solution and act on your choice.

Unless a written standard or law is broken, sometimes ethical standards are hard to assess because they cannot be adequately measured. Clerks should assess their attitudes and values and follow the steps above to work through an issue or problem.

Practice Note

Every year, reports surface in the media regarding scandals related to courts in Texas. Sometimes the scandal is “ticket-fixing;” other times it is embezzlement. It is the responsibility of every member of the court staff to be on the lookout for wrongdoing and report it to the proper authority.

Minor violations of the canons of judicial conduct should usually be brought to the attention of the individual, the court administrator, or presiding judge, before reporting to the Commission on Judicial Conduct. Intentional and knowing violations should be reported to the

Commission immediately, as well as to local officials. All allegations should be well documented and reported to superiors.

The Commission staff is also available to discuss problems that may arise and to clarify the canons. Violations of the Penal Code and Government Code should be directed to the police department, city management, or the county or district attorney.

98. A clerk who had a personality clash with another employee went to her supervisor and said that the other employee did not know how to do the job. Is there an ethical problem here? If so what is it? What should the clerk have done? _____

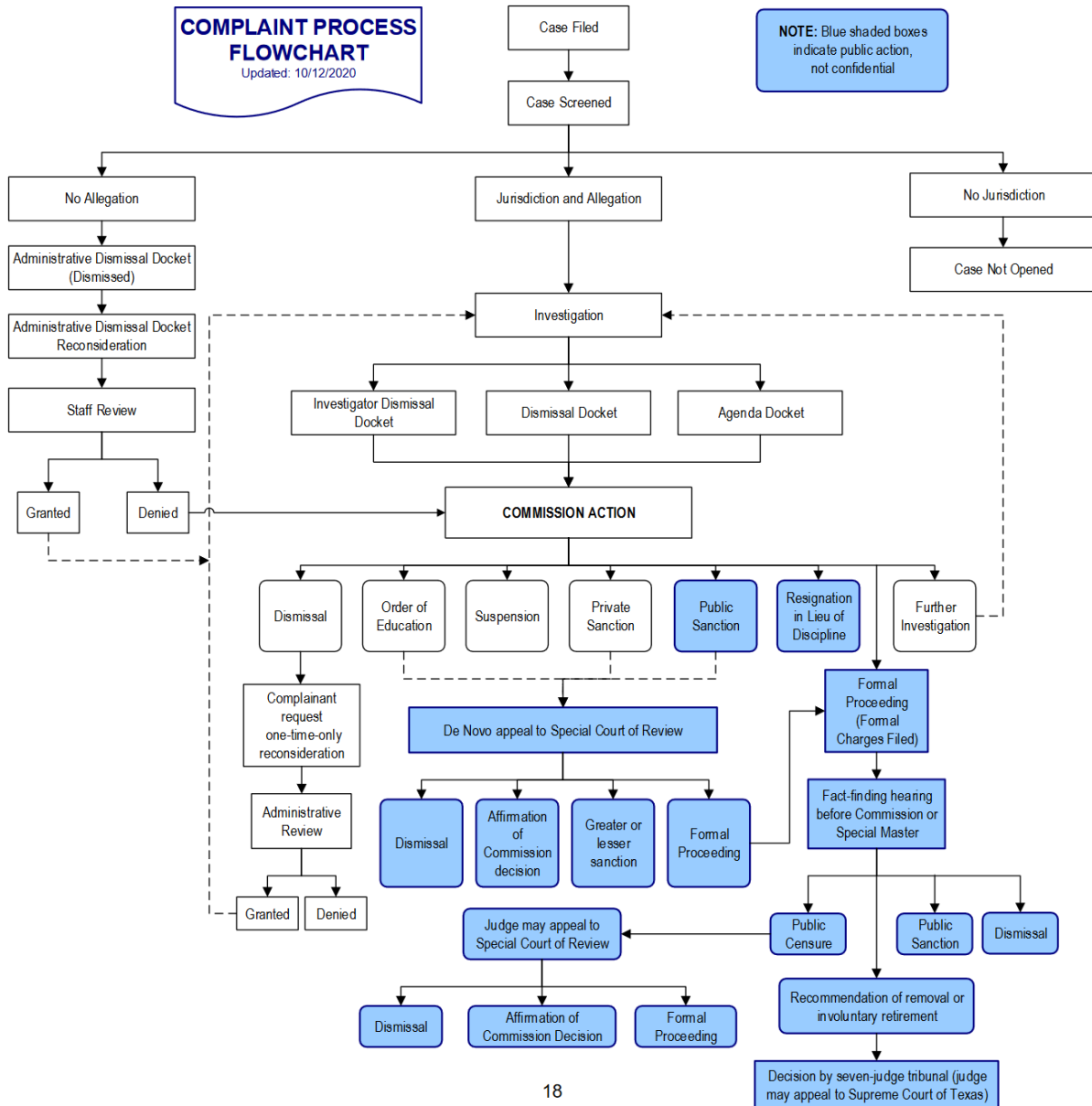
99. A city secretary who supervises the deputy clerks is not familiar with many legal requirements; this causes a clash between the clerks and city secretary. Is this an ethical problem? What should the clerks do? _____

100. Before trial, the judge comes to the clerk's office and wants to know if there is any information she should know about the cases before going to trial. What information may the clerk tell the judge that would not be considered ex parte communication? _____

101. A deputy court clerk, with whom you have become good friends, uses the judge's signature stamp to dismiss a case against her boyfriend. You find out about it. What do you do? _____

102. Should a municipal court clerk report to the Commission on Judicial Conduct a judge's willful violation of the *Code of Judicial Conduct*? _____

APPENDIX A: COMPLAINT PROCESS FLOWCHART



APPENDIX B: CONSANGUINITY AND AFFINITY

Figure 1 – Relation by Consanguinity

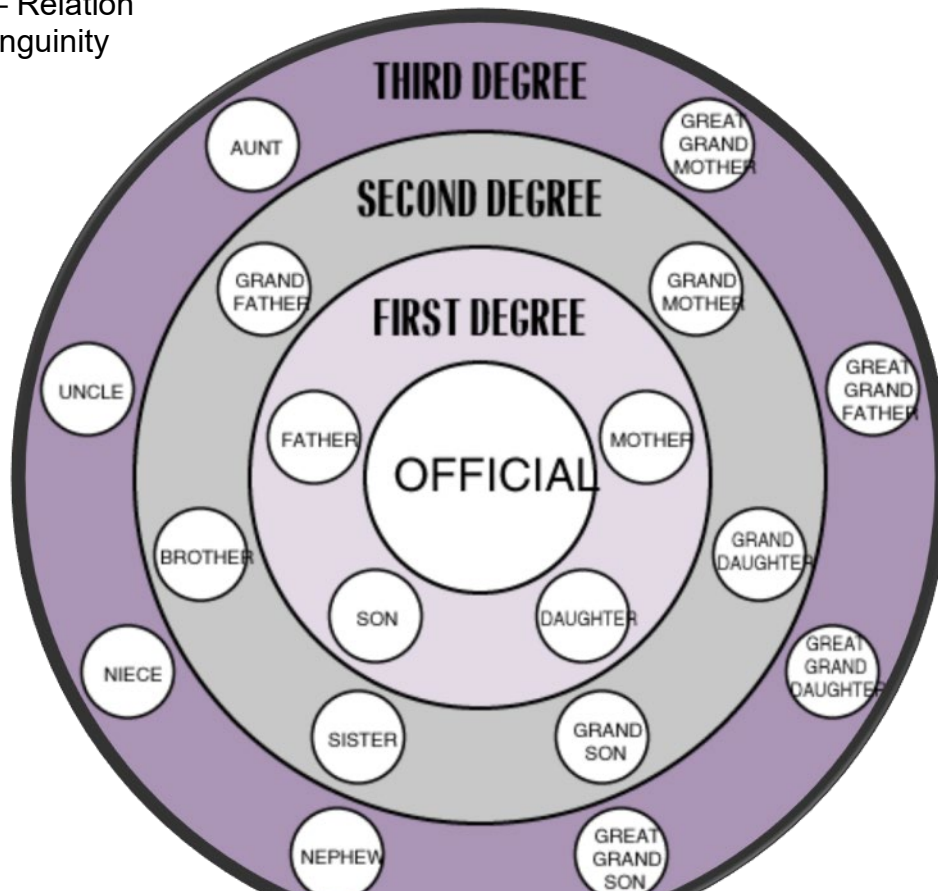
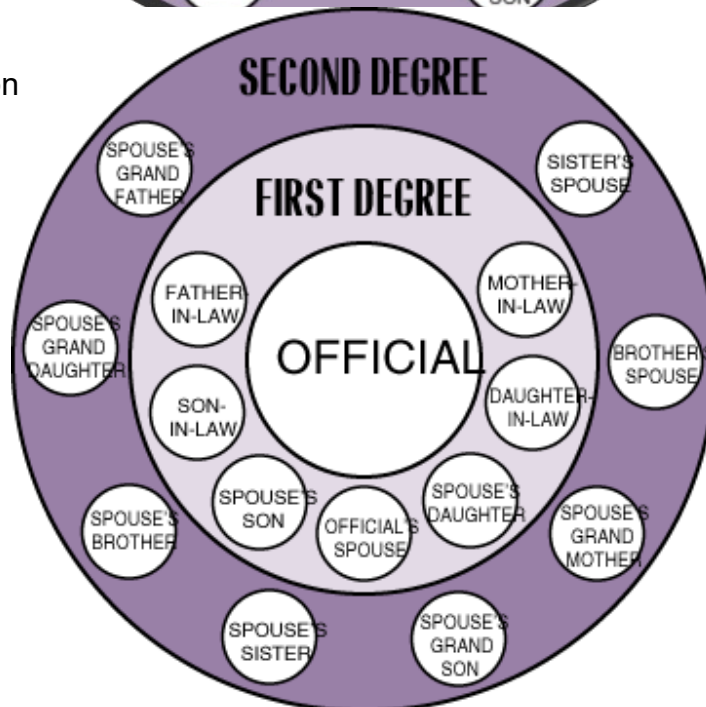


Figure 2 – Relation by Affinity



APPENDIX C: LEGAL INFORMATION VS. LEGAL ADVICE

Legal Information vs. Legal Advice

Guidelines and Instructions for Clerks and Court Personnel
Who Work with Self-Represented Litigants in Texas
State Courts

Edited for use in Texas by: Texas Office of Court
Administration Texas Access to Justice
Commission Texas Access to Justice Foundation
Texas Legal Services Center
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Introduction

Each year thousands of people represent themselves in Texas courts. It is crucial that clerks and court personnel understand how to help the self-represented without giving legal advice. This manual will help explain the difference between legal information and legal advice.

You are the face and voice of justice in Texas. How you respond to questions about the court system affects how people feel about justice, as well as their access to justice. If someone does not understand how to use the court system, and you do not provide available and needed information, that person may be denied access to the courts and to justice.

This manual is specifically intended for the use of clerks and court personnel who provide telephone and counter assistance. It is recommended that you keep the manual in a place where it is easily accessible. Of course, it cannot anticipate all the possible questions that self-represented parties might ask. If you are unsure if your response to a question would constitute giving legal advice, refer to this manual. You can also check with your supervisor.

The manual also contains a one-page list of some things clerks and court personnel can and cannot do (*see page 17*). This list is designed to be used as a handout or a sign posted at the clerk's counter or public window so that people can read and understand the guidelines that you are required to follow.

The law is complicated and confusing. Encourage people to talk to a lawyer about their situation. The *Resources and Referral Information* section of this manual describes a variety of ways people can get help.

Roles and Responsibilities of Clerks and Court Personnel

PROVIDE ACCESS TO THE COURTS

- One of the basic principles of the American justice system is that the doors of our courthouses are open to everyone.
- Most members of the public, however, are not familiar with courts or court procedures and require some level of assistance.
- Access to justice is, in effect, denied if members of the public do not know how to use the court system, and the courts do not assist them in some meaningful way.
- The court is obligated to explain court processes and procedures, to provide quality service, and to provide accurate information to all members of the public.
- An understanding of what information can be provided to the public will significantly affect access to the courts and the administration of justice.

PROVIDE SERVICE WITH ACCURATE INFORMATION

- Accessibility to the judicial system is affected by the accuracy of information provided by the court to members of the public, along with the manner in which it is presented.
- Clerks and court personnel are responsible for giving court users the service they need and deserve by providing accurate information in a competent, cooperative, and timely manner.
- The public's first and only contact with the judicial system may be with clerks and court personnel, whose responses have an impact on how people view their court experience.
- The court should treat all court users fairly and equally: attorneys, defendants, self-represented litigants, and others. In other words, clerks and court personnel should feel comfortable providing the same information to self-represented litigants that they provide on a routine basis to attorneys. All members of the public are entitled to the same information. Providing information to a lawyer that would not be provided to a self-represented litigant is not equal. Similarly, providing information to a self-represented litigant that would not be provided to a lawyer is not equal.
- Clerks and court staff should learn the rules about *ex parte* (one-sided) communication with the judge, and should not let members of the public use them to circumvent that principle.
- Effective service may reduce the number of times court users must come to the courthouse, and thus reduce stress on the court system.
- Provide accurate information because even seemingly small mistakes can affect people's lives or the outcome of court cases. It is better to be honest and say "I don't know" than to give incorrect information.

Why Clerks and Court Personnel Must Not Give Legal Advice, But Should Provide *Legal Information*

CLERKS AND COURT PERSONNEL MUST REMAIN NEUTRAL

- Remain neutral and do not promote or recommend a particular course of action to court users.
- Although you may have processed many similar types of cases, you do not know what is in a court user's best interest. Only they or their attorneys can make that determination.

CLERKS AND COURT PERSONNEL MUST REMAIN IMPARTIAL

- Impartiality is similar to neutrality, but focuses on equal treatment of court users.
- Court knowledge must be shared fairly and equally.
- Never give advice or information that favors one side or the other.
- Do not disclose confidential information or become involved in or facilitate an *ex parte* communication.

CLERKS AND COURT PERSONNEL MUST NOT ENGAGE IN THE UNAUTHORIZED PRACTICE OF LAW

- Only attorneys licensed to practice by the Supreme Court may give legal advice.
- Do not engage in the unauthorized practice of law by providing legal advice.
- Even court personnel who themselves are licensed attorneys may not give legal advice to court users because doing so would violate the principles of neutrality and impartiality.

The unauthorized practice of law statute, [Section 81.101 of the Texas Government Code](#), states:

- (a) In this chapter the "practice of law" means the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.
- (b) The definition in this section is not exclusive and does not deprive the judicial branch of the power and authority under both this chapter and the adjudicated cases to determine whether other services and acts not enumerated may constitute the practice of law.
- (c) In this chapter, the "practice of law" does not include the design, creation, publication, distribution, display, or sale by means of an Internet web site, of written materials,

books, forms, computer software, or similar products if the products clearly and conspicuously state that the products are not a substitute for the advice of an attorney. This subsection does not authorize the use of the products or similar media in violation of Chapter 83 and does not affect the applicability or enforceability of that chapter.

The above statute does not provide an exhaustive list of what constitutes the practice of law. The Supreme Court of Texas has held that *the courts* ultimately decide what is and is not the practice of law.

What is Legal Advice?

Court users are asking for legal advice when they *ask whether or not* they *should* proceed in a certain fashion. ***Telling a member of the public what to do rather than how to do it may be giving legal advice.***

Legal advice is a written or oral statement that:

- Interprets some aspect of the law, court rules, or court procedures;
- Recommends a specific course of conduct a person should take in an actual or potential legal proceeding; or
- Applies the law to the individual person's specific factual circumstances.

What is Legal Information?

Clerks and court personnel may:

- Provide public information contained in dockets, calendars, case files, indexes, and other reports.
- Recite common, routinely-employed court rules, court procedures, administrative practices, and local rules, and explain generally how the court and judges function.
- Refer self-represented litigants to a law library or the court's website for statutes, court rules, or forms.
- Explain the meaning of terms and documents used in the court process.
- Answer questions concerning deadlines or due dates (without calculating due dates).
- Identify and refer self-represented litigants to court forms.

Clerks and court personnel may NOT:

- Recommend whether to file a certain pleading.
- Recommend wording or content for a pleading.
- Recommend specific people against whom to file pleadings.
- Recommend specific claims or arguments to assert at trial.
- Recommend what type of damages to seek or from whom to seek them.
- Recommend techniques for presenting evidence in pleadings or at trial.
- Recommend which objections to raise or which motions to file.
- Recommend whether a party should ask for a continuance.
- Recommend whether or not parties should try to settle their dispute prior to trial.
- Interpret applications of statutes.
- Perform legal research for a party by researching case law, statutes, opinions, etc.
- Predict the outcome of a case.

What is *Ex Parte* Communication?

Black's Law Dictionary defines *ex parte* as "on one side only; by or for one party; done for one party only."

Ex parte refers to situations in which only one party appears before a judge or communicates with a judge.

With few exceptions, the court rules require that all documents filed with the court must be given to all other parties in the case so that the other parties have an opportunity to respond. Thus, it is improper to give information to the judge unless that information has been provided to the other parties in the case.

If a party submits a written *ex parte* communication for a judge, ask the judge what the judge would like to do with the communication. The judge will say either to send a copy to all the parties before the judge reviews it or to send it back to the individual who submitted the document. Check for any other local policies on this issue.

If a party asks to talk to a judge, suggest that they write down what they want to say and file it with the court. This written communication should:

- Include a proper heading, including the case number.
- Be dated and signed, with the name printed under signature.
- Include the party's address and telephone number over the heading.

- Be copied to the opposing party or counsel following Texas Rules of Civil Procedure.

The original should be submitted to the clerk and the party should keep a copy for their records.

If the party has an emergency situation and there is no time to submit a written request, communicate with the judge *if* allowed by local rules. The party should be warned that the request may not be granted.

Quality Service: Strategies for Answering Difficult Questions

It may not always be clear that it is appropriate to answer a member of the public's question. However, there are several things that can be done to assist court users and make it easier to identify whether the question is asking for legal information or legal advice.

LISTEN CLOSELY AND ASK QUESTIONS

- Let members of the public ask their questions and listen carefully to what they are asking.
- Be an active listener and respond reflectively. If necessary, repeat or rephrase the question to state what you think they are asking.
- Take the time to clarify what court users need. If someone asks a question that is not clear, ask follow-up questions to clarify what they mean.
- Ask court users if they have completely read any paperwork they may have.

BE PATIENT

- Think how much the court user will appreciate someone taking the time to answer questions and explain an unfamiliar process.
- Coming to court can be stressful, confusing, and intimidating; so take the time to welcome and greet court users.
- The same questions may have been asked many times before, but remember that this is the first time for this particular court user.
- Remain calm even when the court user is not. Attitude is key. Some people may just need to vent. Take it professionally, not personally.

EXPLAIN ANSWERS and GIVE REASONS

- Providing the reasons why certain information cannot be given helps minimize people's frustration and increases their understanding of the court system. If a question cannot be answered, explain how important it is that clerks and court personnel remain **neutral and impartial**. Always be clear and concise when providing information. Ask the person how they would feel if the clerk or court personnel gave legal advice to the other side.

- The phrase “I cannot give legal advice” should never be used as an excuse not to provide service. Politely state that clerks and court personnel cannot explain or interpret the law or say how it would apply to a case because that would be giving legal advice. Also, explain that clerks and court personnel do not have legal training and if the clerk tries to give information about which they are not completely informed, it might jeopardize the outcome of the case for the party.
- If a question cannot be answered, try to give a good referral such as to a local lawyer referral service, legal clinic, the court’s website, or go to www.TexasLawHelp.org. Remember: **do not** recommend specific attorneys; remain neutral and impartial at all times.

**Procedural Explanations
vs.
Procedural Recommendations**

Provide procedural information and explanations on how to accomplish various actions within the court system. Explaining various procedures increases the public’s understanding of the court system and provides greater access to the courts.

Do not make any recommendation that would indicate a direct advantage or disadvantage of a particular procedure. It is not appropriate to tell court users what is the best course of action for them to take, nor is it appropriate to give opinions about the probable outcome of a case.

CAN PROVIDE Procedural Explanations	CANNOT PROVIDE Procedural Recommendations
Question: Can you tell me how to file a small claims action?	Question: Can you tell me whether it would be better to file a small claims action or a civil action?
Response: Yes. You need to fill out a sworn small claims statement and file it with the clerk’s office. When you file the affidavit, you will have to pay a filing fee. The clerk will issue you a case number and issue paperwork called the citation. Tell the clerk where the person you are suing may be found because the person must be served before the court can grant you any relief. The small claims form is on the court’s website.	Response: I cannot tell you which process would be best for your situation because I cannot give you legal advice. You may want to talk to an attorney about this issue to determine which process best fits your situation. You may also contact other legal resource organizations in your area, or you may conduct research at the local law library.

General Information about Court Operations
vs.
Confidential or Restricted Information about Court Operations

Answer questions about court policies and procedures if the information could not be inappropriately used to affect the status or outcome of a case. It is important not to disclose information that would allow one party or another to have an unfair advantage.

As a general rule, it is appropriate to provide information on how to do something, but it is not appropriate to answer the “how” question when it involves the disclosure of **confidential** or **restricted** information.

CAN PROVIDE General Information About Court Operations	CANNOT PROVIDE Confidential or Restricted Information About Court Operations
Question: When will my divorce go to court?	Question: Can you tell me when Judge Doe will be on vacation so I don't have to appear in front of him again?
Response: This time frame may depend on the type of service in the case. Hearings are only needed on contested cases and it will depend upon the status of the pleadings as to when it is set. There are general instructions and appropriate forms for uncontested divorce on the court's website, or you may wish to obtain legal help if your case is going to go to trial.	Response: I cannot give you personal information about the judge.

Explaining Legal Terms
vs.
Providing Legal Interpretations

Explain legal terms so that people will have access to the court and understand the court system. While it is appropriate to explain legal terms, it is not appropriate to provide legal interpretations.

CAN PROVIDE Legal Definition	CANNOT PROVIDE Legal Interpretation
Question: What does “certificate of service” mean?	Question: My neighbors leave their kids at home all day without supervision. Isn’t that child neglect?
Response: The rules require parties to file proof with the court that they complied with the requirement to serve other parties. This is called “certificate of service.” The rules require parties to give copies of any document filed with the court to all other parties in the case. The methods for service available to Texas litigants are outlined in the court rules and state statutes, in particular you may wish to look at Rule 21a of the Texas Rules of Civil Procedure. The rules are available on the court’s website.	Response: I am not an attorney or a judge and cannot make that legal determination. I can, however, refer you to Child Protective Services who may be able to help you. If you are concerned that the children are in any kind of danger, contact law enforcement.

Tip: The Texas Rules of Civil Procedure are available at
<http://www.txcourts.gov/media/1055394/trcp-20150901.pdf>.

The Self Help section is available at
<http://www.txcourts.gov/programs-services/self-help.aspx>.

Providing Forms and Approved Instructions vs. Filling Out Forms

Another important way to facilitate access to the court is by providing forms and assistance where resources allow. It is important to know what forms and written instructions are available from the court and other agencies.

Often court users will not know what forms to request in order to bring their matters before the court. When this happens, clerks and court personnel should direct them to available resources for forms such as the court’s website, law libraries, and legal clinics. Answer procedural questions about how to complete court papers and forms. For example, tell a court user whether a form needs to be notarized or what factual information the form is asking for,

but do not say what words to put on the forms. If someone asks what to say in a form, tell the person to use his or her own words. Due to time and resource constraints, suggest that people fill out as much of their form as possible before asking for assistance.

The Americans with Disabilities Act (ADA) requires reasonable accommodation to people with disabilities, which may include helping them fill out forms. Some legal clinics and legal service agencies will help people with disabilities fill out forms.

When helping someone fill out forms, write down exactly what the person dictates, word for word. Do not correct the person's grammar, and do not paraphrase or edit what the person says. This can be considered giving legal advice, and threatens the court's impartiality. Once the form is filled out, read it back to the party to confirm that what is written is correct. Write or stamp "dictated by court user, written verbatim by court staff," and your name or initials in the margin, and why the assistance was necessary.

CAN PROVIDE Providing Forms and Approved Instructions	CANNOT PROVIDE Filling Out Forms
Question: I need to file for divorce and I have no idea where to begin. Is there some place I can go to find out how to get started?	Question: The self-help divorce petition says I should list as my separate property any gifts I received while we were married. My parents gave us money to make our house payments for several months. Should I list that money as my separate property?
Response: Sure. The Texas Law Help website has forms and instructions for uncontested divorces. Go to www.TexasLawHelp.org to find a full list of free forms. The court charges a fee to file your papers. This fee varies from county to county and may depend on whether children are involved.	Response: I cannot help you decide what information to enter. If you have questions about what information is appropriate to enter on the forms, you can ask an attorney or visit a legal clinic. Information about legal clinics is available on the court's website.

Public Case Information
vs.
Confidential Case Information

Some documents or entire cases are confidential and the information cannot be disclosed. Ask a supervisor what records or cases are public and what are not.

Do not disclose the outcome of a matter submitted to a judge for decision until the outcome is part of the public record or the judge directs disclosure of the matter.

Do not speculate on the possible outcome of a matter submitted to a judge or a jury until the outcome is part of the public record. This also applies in cases when a matter has not yet been submitted to the court.

Generally, court case records are open to the public, and some records are made public by law. For example, search warrants and the affidavits that support them are public. Also, records in paternity suits are available for public inspection.

Some court case records may be sealed by the judge in civil cases under Rule 76a of the Texas Rules of Civil Procedure. The access to other kinds of court case records, such as records in mental health proceedings and juvenile case records, is limited by law. There are several other kinds of court case records that may be protected law. Be sure to check with your supervisor if there is a question about what records are public and what are not.

If court case records are confidential or protected by law, do not read them unless necessary to do your job. These records may contain highly personal information about parties, and it is inappropriate to read them unless required for your work.

CAN PROVIDE Public Case Information	CANNOT PROVIDE Confidential Case Information
Question: My mother died four months ago, and I lost my paperwork regarding her probate case. Can you give me the case number, and can I get copies of the pertinent documents?	Question: I think there is a mental health case for my uncle in your court. His name is John Smith. Can you tell me anything about his case?
Response: Yes. I need to know her name. I'll check our records and give you the case number. Then, you can visit our courthouse and view the file.	Response: Mental health cases are private and therefore I cannot provide you with any information. This type of information can only be disclosed by court order.

Tip: The Office of Court Administration publishes manuals for district clerks and county clerks which address requests for court case records. They are available at <http://www.txcourts.gov/publications-training/training-materials/manuals-bench-books/clerk-manuals-handbooks.aspx>

Options vs. Opinions

Provide information on the various procedural options that are available and what the differences are between the options. It is important to explain options because the person is often not aware of those options. People have better access to the courts when options are explained.

It is also important to advise people of **all** appropriate options. Providing only some of the options may indirectly influence a decision by limiting the person's choices.

Do not give an opinion about what specific remedies to seek or which option the person should use or otherwise advise someone on whether to bring the problem before the court. Remain neutral and do not take a position that will encourage or discourage a particular course of action.

CAN PROVIDE Options	CANNOT PROVIDE Opinions
<p>Question: What can I do if I cannot afford to pay the filing fee?</p>	<p>Question: My ex-husband hasn't paid the debts that he agreed to pay in our divorce settlement. Now he's filed for bankruptcy. The creditors are coming after me. This is ruining my credit. I don't live in Texas anymore. What can I do? He had an agreement and he's not following it. Can I be made responsible for this debt?</p>
<p>Response: You can request an <i>affidavit of inability to pay costs form</i>. This form allows you to open your case without paying the fee. The forms are available on the court's website and on Texas Law Help's website.</p>	<p>Response: I cannot advise you what you can do because I cannot give you legal advice. The bankruptcy filing further complicates this matter. You may want to consult an attorney. You can contact a local lawyer referral service to find out if there are any free legal advice clinics that you could attend to get further information, or see Texas Law Help's Find Legal Assistance web page.</p>

Citing Statutes, Court Rules and Ordinances
vs.
Researching Statutes, Court Rules and Ordinances

It is appropriate to share known statutory and court rule citations, especially as they apply to procedures. However, it is not appropriate to conduct legal research. There are two factors that help distinguish between the two:

- If the information is something clerks and court personnel should know as a part of their job, then it is not considered legal research, even if it has to be looked up in the statutes, rules of civil procedure or local court rules.
- If the information is readily available and does not have to be compiled, then it is unlikely to be considered legal research. If the information has to be compiled, then it probably is legal research.

CAN PROVIDE Cites of Statutes, Court Rules and Ordinances	CANNOT PROVIDE Research of Statutes, Court Rules and Ordinances
Question: Can I get a copy of a document from a case? Is it a public records?	Question: What laws govern tort claims?
Response: Court records and documents are public record unless they have been sealed under Rule 76a of the Texas Rules of Civil Procedure, or they are confidential under some other law. The law requires that we charge a copying fee. If the document needs to be certified, there is an additional fee and per page copy fee.	Response: I cannot perform legal research for you, but you can do that research yourself or contact an attorney to assist you. The statutes and rules are available online and at the law library. Contact the State Law Library for help getting started in your research.

General Referrals
vs.
Subjective or Biased Referrals

Because the court, clerks, and court personnel must remain impartial in all matters, do not make referrals to a specific lawyer, law firm, or paralegal service. Instead, refer people to the court's website, local lawyer referral service, the State Bar, or the yellow pages of the telephone book.

It is also helpful to keep lists of contact information for local government agencies and departments where people are frequently referred. Sometimes it is appropriate to make a call to the referred agency or department (if time permits) to make sure it can accommodate the person before sending them there.

CAN PROVIDE General Referral	CANNOT PROVIDE Subjective or Biased Referral
Question: I need a process server. Where do I find one?	Question: Can you recommend a good process server?
Response: We do not have lists of process servers at the court. Pleadings may be served by a sheriff, a constable or you can also check in the phone book or on the internet for certified private process servers.	Response: I'm sorry, but the court must remain impartial. I cannot recommend a specific process server. I suggest that you check the phone book or the internet for a certified private process server.

Tip: Develop and have available a list of general resources and referrals. Good general referrals include the yellow pages and the Internet. A list of certified private process servers is available at <http://www.txcourts.gov/jbcc/process-server-certification.aspx>.

Permissible vs. Impermissible Forms of *Ex Parte* Communication

Do not transmit information to a judge unless that information has been provided to the other parties in the case. To uphold this principle, follow these guidelines:

- Do not communicate to the judge case information acquired through personal knowledge, read in the newspaper, or heard on the radio or from someone else.
- Do not transmit verbal information to a judge on behalf of a party or attorney concerning a case unless it involves scheduling or other administrative matters.
- Screen the judge's calls. Do not transfer phone calls to a judge from parties or attorneys without learning what the caller wants to talk to the judge about and whether it is associated with a case before the judge, and then ask the judge if he/she wants to take the call.
- Communications about scheduling or other administrative matters are permitted because they do not deal with the litigation's substance or merits, and no party gains an advantage as a result of the *ex parte* contact.

CAN PROVIDE Permissible Forms of <i>Ex Parte</i> Communication	CANNOT PROVIDE Impermissible Forms of <i>Ex Parte</i> Communication
<p>Question: Has the judge ruled on the motion to dismiss yet?</p>	<p>Question: I am a prosecutor in the DWI case today. Please tell the judge that I don't think we're going to have the trial today because the defendant has already admitted he was drunk.</p>
<p>Response: No, the judge has not ruled on the motion yet. It is still under advisement.</p>	<p>Response: I cannot tell the judge information about potential evidence in the case because it would be an impermissible <i>ex parte</i> communication. I can relay to the judge that the prosecutor states the trial will not go forward, or I can ask the judge if he would be willing to speak to you.</p>

This is a list of some things clerks and court personnel can and cannot do.

We can	explain and answer questions about how the court works.	We cannot	tell you whether or not you should bring your case to court.
We can	provide the number of the local lawyer referral service, legal services program, Texas State Bar lawyer referral service, and other services where legal information is available.	We cannot	tell you what words to use in your court papers. However, we will check your papers for completeness. For example, we check for signatures, notarization, correct county name, correct case number and presence of attachments.
We can	give general information about court rules, procedures and practices.	We cannot	recommend what to say in court.
We can	provide court schedules and information on how to get a case scheduled.	We cannot	give an opinion about what will happen if you bring your case to court.
We can	give you information from your case file.	We cannot	talk to the judge for you or let you talk to the judge in private.
We can	give you samples of court forms that are available.	We cannot	change an order signed by a judge.
We can	usually answer questions about court deadlines.	We cannot	tell you what deadlines apply in your case.

Resources and Referral Information

Texas Law Help

www.texaslawhelp.org

The Texas Law Help website is a resource for people who do not have an attorney. Topics offered on the website include:

- Civil Rights
- Consumer Cases
- Wills and Estates
- Family Law
- Forms & Instructions
- Juvenile Cases
- Landlord Tenant
- Mediation
- Domestic Violence
- Seniors
- Spanish Resources
- Veteran Issues

Alternative Dispute Resolution

<http://www.texasadr.org/>

Going to court litigation may not always be the best way to resolve a problem. Alternative dispute resolution (ADR) is one way to work out an agreement. Mediation and arbitration, for example, both involve neutral, third parties who may facilitate a resolution. ADR can be used for many types of cases, including co-parenting, divorce, probate, contract disputes, other civil cases and appeals.

Legal Assistance Organizations and Other Non-Profit Organizations

www.texaslawhelp.org

www.lsc.gov

Contact information for Texas agencies and organizations such as Legal Aid of NorthWest Texas, Texas RioGrande Legal Aid, Lone Star Legal Aid, Advocacy, Inc., Texas Legal Services Center's Legal Hotline for Texans, and the Texas Advocacy Project's Family Law Hotline and Family Violence Hotline, and immigration law resources. On the Texas Law Help website, select the *Find Legal Assistance* tab. This tab also contains information about other organizations that assist with various legal problems, including consumer protection, landlord-tenant, OSHA complaints, complaints about nursing homes, and assistance with utility companies. On the Legal Services Corporation website, select Texas on the map of the United States. Most legal aid programs have income guidelines that determine the people or families they can serve. Persons must apply for assistance. Because of resource limitations, not everyone who qualifies will receive assistance.

Finding an Attorney

The State Bar of Texas Lawyer Referral Information Service is a free service provided by the Texas State Bar to help people find an attorney. Access the State Bar of Texas Lawyer Referral Information Service on the Texas Bar website at www.texasbar.com to Find a Lawyer. Get a referral on the right side of the page. Most lawyer referral programs refer people to attorneys who charge a nominal fee for the initial consultation; further fees will be negotiated by the attorney and client if they agree to continue.

Other resources include the yellow pages or friends who may have recommendations. Do not provide lawyer referrals. Another resource is www.martindale.com, an online version of the print lawyer directory Martindale-Hubbell. This site can be searched by location and subject specialty, and provides information about a lawyer's education and experience, as well as the ratings other lawyers give them.

Limited Legal Help

Many people cannot afford to hire an attorney. Limited legal help, also known as "limited scope legal representation," is an alternative way to get legal help. Under this kind of arrangement, an attorney and client agree that the attorney will provide specific services for a predetermined fee. For example, the attorney and client could agree that the attorney do one or more (but not all) of the following:

- will only advise the client about the strength of the case;
- help draft a document;
- review a document the client has drafted;
- coach the client for a negotiation;
- help with the discovery process;
- coach the client for a hearing;
- appear in court on behalf of the client for one hearing only; or
- any combination of these kinds of services.

Hiring an attorney to handle part of a case can be an affordable alternative to hiring one to take care of the entire case (also called "full representation"), and may be preferable to representing yourself in court -- a process that takes time and patience and can be confusing. People who act as their own attorney are expected to know and follow the same rules that attorneys follow.

Not all cases are suited for limited legal help. Attorneys who are interested in providing limited scope representation may be found using the resources described above in the **Finding an Attorney** section. Feel free to ask attorneys if they are willing to provide limited scope representation.

State Bar of Texas

www.texasbar.com

The State Bar of Texas Client-Attorney Assistance Program helps resolve problems between clients and attorneys. Also, a person with a complaint against an attorney may file a formal complaint ("grievance") against the attorney with the State Bar. On the State Bar's website, select *Client Assistance & Grievance* for more information. The State Bar's Texas Lawyers Care department publishes a [referral directory of legal services and other resources](#) for low-income Texans.

Texas Law Libraries

Law libraries have print and online resources including statutes, regulations, court rules, and court decisions, as well as legal encyclopedias, form books, and books about specific areas of law. Most law books are written for legal professionals, but some books are written for non-lawyers. Law library staff cannot give legal advice, but they can show people how to use their resources.

Texas State Law Library
www.sll.state.tx.us
205 West 14th Street Austin,
Texas 78701-1614 (512) 463-
1722

Texas Statutes and Legislative Process

www.statutes.legis.state.tx.us (Statutes)
www.capitol.state.tx.us (Texas Legislature)

The first website contains state statutes. The second website contains information about bills in the Texas Legislature and the legislative process.

Texas Court System

www.txcourt.gov

The Texas Judicial Branch website contains information about the Texas court system.

Texas Forms

Legal form books provide sample language that can be used to prepare documents to file with the court. Some forms are fill-in-the-blank, while others only provide language that must be tailored to the situation. Forms are not available for every situation.

- Some courts have forms available online or in the clerk's office or county law library. Check on your court's or county's website.
- Some court forms are available at <http://texaslawhelp.org/resource/texas-forms> (click on *a list of forms and topics*.)
- Texas continuing legal education materials often include forms. Search the catalogs of university law libraries for the relevant topic, such as contracts, and include "Texas" in the search.

ANSWERS TO QUESTIONS

PART 1

1. Ethics is the discipline dealing with what is good and bad and with moral duty and obligation. It is a set of moral principles or values.
2. Integrity is strict personal honesty and independence. It is adherence to one's moral values or putting into practice one's values and beliefs.

PART 2

3. The objectives of the Commission are:
 - (1) to preserve the integrity of all judges in the State;
 - (2) to ensure public confidence in the judiciary; and
 - (3) to encourage judges to maintain high standards of both professional and personal conduct.
4. To achieve these goals, the Commission issues sanctions and secures the removal of judges from office who violate legal or ethical standards. In addition, the Commission participates as faculty members in continuing education programs at all levels of the judiciary.
5. The State Commission on Judicial Conduct was created by an amendment to the Texas Constitution in 1965. Article V, Section 1-a of the Texas Constitution and Chapter 33 of the Texas Government Code are the sources of authority under which the Commission operates.
6. False (the complaint must be written).
7. True.
8. False.
9. False.
10. True.
11. True.
12. True.
13. Rank the following actions in order of severity. (1=the most severe.)
 1. Removal or Censure.
 4. Private Admonition.
 2. Public Reprimand.
 3. Public Admonition.

PART 4

14. Our legal system is based upon the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us.
15. It is required by the *Code of Judicial Conduct*. Canon 3C(2) of the Code says that judges should require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.
16. The judge may be held responsible.

Canon 1

- 17. True.
- 18. True.
- 19. True.

Canon 2

- 20. False.
- 21. False.
- 22. False.
- 23. True.
- 24. Indicate whether the following behaviors are proper or improper for a clerk. (P=Proper; I=Improper)
 - I - Telling the judge about the belligerent attitude of a defendant scheduled for a bench trial.
 - I - Recommending a specific driving safety school to a defendant.
 - I - Using court stationery to offer a product or service for purchase to earn extra money.
 - I - Looking up your girlfriend's traffic record.
 - I - Drinking beer while working overtime at the office.
 - I - Asking an officer to not file a traffic ticket against a friend.
 - I - Closing the court or decreasing fines to put pressure on the city council to increase salary and benefits for court personnel.

Canon 3

- 25. True.
- 26. True.
- 27. True.
- 28. True.
- 29. True.
- 30. False.
- 31. False.
- 32. Indicate proper or improper conduct for the clerk. (P=Proper; I=Improper)
 - P - Informing defendants how to properly conduct themselves in court.
 - I - Shouting at a belligerent defendant.
 - I - Telling sexual or racial jokes to jurors while they are waiting to be called into the courtroom.
 - I - Not explaining all the court options to members of a certain ethnic group.
 - I - Responding to a news reporter who asks you to review an article for legal accuracy. It contains information about a Class C misdemeanor assault that is pending in your court and is part of a larger civil suit for sexual harassment.
 - P - Developing a records management program to help the court manage the progress of the cases through the court.

- P - Working with the judge to oversee the administration of the court.
- P - Providing information requested under Rule 12.

Canon 4

33. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)
- P - Writing a weekly column with the judge about legal matters and court activity for the local newspaper.
 - P - Teaching classes for the Texas Municipal Courts Education Center.
 - P - Speaking to high school students in a government class on “Your Rights in Traffic Court.”
 - I - Selling tickets for your daughter’s booster club to a group taking a driving safety course.
 - I - Traveling free to Las Vegas on a law firm’s private plane. The law firm frequently handles traffic tickets in your court.
 - P - Accepting gifts from a friend or a relative on special occasions when the friend or relative is not before the court.
 - P - Accepting free legal publications from the Texas Municipal Courts Education Center.
 - I - Accepting an invitation to a Christmas party that is being conducted by a company that has a pending case in your court.
 - I - Using court stationery to write a letter to a company which has failed to provide you with promised service.
 - I - Having your title as court clerk listed by your name on a letter being sent by a local charity organization that is soliciting toys for disadvantaged children.

Canon 5

34. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)
- I - Making public statements in the local restaurant about persons running for city council.
 - P - Commenting privately to your spouse as to who would be the best candidate for mayor.
 - I - Wearing political T-shirts and buttons for local political races while at work.
 - I - Talking to defendants about who will be the best candidate for mayor.

Canon 6

- 35. True.
- 36. True (the municipal court does not have jurisdiction of this case so the judge may talk with the defendant to explain that he or she has no authority over this case, and it must be filed in another court).
- 37. False.
- 38. False.
- 39. False.

- 40. True (because the clerk is not an interested party, but it could be improper conduct for the same reason that ex parte communication is prohibited, i.e., apprising the judge of the merits of a pending judicial proceeding without all interested parties present).
- 41. False.

Canons 7 and 8

- 42. True.
- 43. True.
- 44. True.

PART 5

- 45. False.
- 46. True.
- 47. False (helping a defendant complete a form is giving legal advice).
- 48. False.
- 49. The clerk may explain the court procedures and processes and give the defendant a pamphlet that explains these processes and the defendant's obligations and rights. Do not advise the defendant on how to handle his or her case.

PART 6

- 50. True.
- 51. True.
- 52. True.
- 53. True.
- 54. False.
- 55. False.

Chapter 36

- 56. True.
- 57. False.
- 58. True.
- 59. False.
- 60. True.

Chapter 37

- 61. True.
- 62. True.
- 63. True.
- 64. True.
- 65. True.
- 66. False.

Chapters 38 and 39

- 67. True.
- 68. True.
- 69. False.
- 70. True.
- 71. False.
- 72. True.
- 73. False.
- 74. False.
- 75. False.

Government Code, Chapter 573

- 76. True.
- 77. True.
- 78. True.
- 79. The judge's father, mother, and children.
- 80. The judge's father, mother, children, brothers, sisters, grandparents, and grandchildren.
- 81. The judge's father, mother, children, brothers, sisters, grandparents, grandchildren, great-grandparents, great-grandchildren, uncles, aunts, nephews, and nieces.
- 82. Answers will vary from clerk to clerk.
- 83. Affinity.
- 84. Affinity.
- 85. Neither by consanguinity nor by affinity.
- 86. The judge's relatives within the first degree by marriage are his or her spouse, his or her spouse's parents, his or her spouse's children, his parent's spouse, or his children's spouses. Those within the second degree include those above plus his spouse's brothers, sisters, grandparents, and grandchildren, and his brothers, sisters, grandparent's or grandchildren's spouses. Those within the third degree include all those above plus his spouse's great-grandparents, great-grandchildren, uncles, aunts, nieces, and nephews, as well as any spouses of his great-grandparents, great-grandchildren, uncles, aunts, nieces, and nephews.
- 87. Answers will vary from clerk to clerk.
- 88. False.
- 89. True.
- 90. False.
- 91. False.
- 92. True.
- 93. 30 days.
- 94. No.
- 95. False.
- 96. True.

97. He or she may be fined \$100 to \$1000 and be removed from office.

PART 7

98. A personality clash is not an ethical problem, but when the clerk told her supervisor that the other person did not know how to do her job just because of their personal differences, it became an ethical problem. The ethical problem is the clerk's lie about the other employee. If the two employees could not work out their differences, they should have asked a supervisor to mediate, and both demonstrated an effort to not let their differences affect their work.
99. This is not an ethical problem. The city secretary's problem is a lack of training and education. This problem can be remedied by the city secretary reading materials from the Texas Municipal Courts Education Center.
100. The clerk may discuss with the judge administrative matters concerning the scheduling of the cases for trial or such matters as motions for continuances. The clerk may not discuss the merits of any of the cases, any information blurted out by defendants, or any conversations he or she had with any of the witnesses (usually peace officers).
101. This is not only an ethical violation, but it is also a crime. It is tampering with a governmental record. You should report it to your supervisor, judge, and chief of police immediately.
102. Canon 3D requires judges to take appropriate action upon receiving information clearly establishing that another judge has committed a violation of the Code of Judicial Conduct. If the violation raises a substantial question as to the other judge's fitness for office, the judge shall inform the State Commission on Judicial Conduct or take other appropriate action. Depending on the circumstances, the appropriate action may be reporting the judge to the city council or the Commission. If in doubt, you should call the Commission to discuss the issue.