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Texas Magistrates: Gatekeepers to Indigent Defense

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Introduction

This is the last of a three-part series of articles describing Texas magistrates' responsibilities under the Fair Defense Act (FDA). Previous articles have described the responsibilities of the actors involved in implementing the law and have reviewed magistrates' duties in conducting Article 15.17 hearings. This article elaborates on the role of magistrates in indigent case processing under the FDA. This series is designed to complement trainings being conducted statewide by the Task Force on Indigent Defense.

Processing Requests for Court Appointed Counsel

Appointment of legal counsel in Texas counties is controlled by Article 26.04 of the Code of Criminal Procedure. Since the passage of the Fair Defense Act in 2001, criminal defendants now have their first opportunity to ask for representation when they appear before a magistrate within 48 hours of arrest. As gatekeepers to indigent defense services, it is important that magistrates have a thorough understanding of both state and local guidelines for assigning counsel.

The Local Indigent Defense Plan. While timelines for determining eligibility and appointing counsel are set by state law, the specific procedures within those legal parameters vary by county. Every other year the judges of county courts, statutory county courts, and district courts trying criminal cases are required by Section 71.0351, Government Code, to adopt and publish their local procedures for assigning legal representation.[1] These

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Case Law Update & Attorney General Opinion Update

by Ryan Kellus Turner, General Counsel, TMCEC

Except where otherwise noted, the following case law and opinions were handed down August 31, 2004 through October 1, 2005.

Search & Seizure

A. Arrest Warrants

Does the Exclusionary Rule Apply Where a Defendant is Arrested on Warrants for Traffic Offenses

Lacking a Magistrate's Signature or Proof that Probable Cause had been Determined?

Ray v. State, 148 S.W.3d 218 (Tex. App. - Texarakana 2004)

A police officer stopped a vehicle after observing the seat belt hanging out the door. The officer took the driver and the defendant (front seat passenger)

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AROUND THE STATE

TMCA Recognizes Outstanding Judge & Clerk

Judge Steve Williamson, Fort Worth, and Judge Allen Gilbert, San Angelo

The Honorable Judge Allen Gilbert of San Angelo was selected by the Texas Municipal Courts Association (TMCA) to receive the Association's Outstanding Judicial Award. Judge Gilbert received the special judicial recognition award at the TMCA's Annual Convention held at the St. Anthony Hotel in San Antonio on September 10-11, 2005. The award recognized Judge Gilbert for his contribution to the fair and impartial administration of justice. Serving as Municipal Judge for the City of San Angelo for 30 years, Judge Gilbert has been a driving force initiating programs in the realms of court security, juvenile community service, and legal education. His credentials furthermore include an appointment to the Texas Judicial Council for the State of Texas. Judge Gilbert is an outstanding role model in the community in San Angelo, where he speaks to classes, coaches a variety of sports teams, and volunteers with the San Angelo Boys Club, YMCA, and Boy Scouts. Since 1974, Judge Gilbert has been an active member of TMCA, serving on the TMCA/TMCEC Board of Directors as President and Vice President. As a TMCEC faculty member, he shares his knowledge with his fellow judges and is a highly rated presenter.

Frances Bock, the Court Clerk for the City of Hallettsville, was selected by the TMCA to receive the Association's Outstanding Clerk Award. Mrs. Bock also received the special award on September 10, 2005 at the TMCA's Annual Convention in San Antonio. Mrs. Bock began work in the Hallettsville Municipal Court in 1991, and she has used the continuing education and legal training offered by TMCEC to help her court flourish. The Hallettsville Municipal Court has computerized their court records as a result of her initiative. She has lent her assistance to numerous other courts. Her service to the City of Hallettsville extends beyond the municipal court, as she is also the Assistant City Secretary and a Director on the Chamber of Commerce and Agriculture Board. Mrs. Bock is an active participant in her community, where she is a member of the Sacred Heart Catholic Church Parish Council, a chairperson for the Red Carpet Committee, and a diligent volunteer who freely gives her time to help organize the Kolache Fest, the Miss Hallettsville Pageant, and numerous other festivals and events that Hallettsville offers.

Frances Bock and Judge Robert Kubena, Halletsville

TMCEC congratulates both award winners.

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procedures and forms must be filed by November 1 in odd numbered years with the Office of Court Administration for the Task Force on Indigent Defense (Task Force), the state entity charged with oversight of the Fair Defense Act. The procedures adopted must include financial standards, forms, and procedures used to determine whether individuals qualify for appointed counsel. All local indigent defense plans are published online at: www.courts.state.tx.us/oca/tfid/index.asp.

Taking the Request for Court Appointed Counsel. During the 15.17 hearing, state law specifies that criminal defendants must be informed of their right to request counsel. If an individual wishes to request an appointed attorney, the magistrate is to describe the procedures established by the district and county judges in the Local Indigent Defense Plan, and provide the locally approved Request for Counsel form. On the Request for Counsel form, the defendant must report, under oath, the requested information concerning his or her financial resources.[2] It is the magistrate's duty to ensure that reasonable assistance is available to defendants who have questions or experience difficulty completing the necessary forms. [3]

Transfer of Requests for Court Appointed Counsel to the Appointing Authority. Within 24 hours of magistration, the formal Request for Counsel, including information concerning the arrested person's financial resources must be received by the person(s) designated in the Local Indigent Defense Plan to determine indigence and appoint counsel.[4] In some counties this responsibility is delegated directly to the magistrate. If the magistrate is the appointing authority, the determination of indigence and assignment of legal representation occurs during the 15.17 hearing. By eliminating the need to transfer the Request for Counsel paperwork to a different appointing authority, first contact with an attorney is expedited by as much as two to four days (depending on county population).

If the magistrate is not authorized to appoint counsel, he or she should forward the completed paperwork to the appropriate designee without unnecessary delay, and not later than 24 hours after request for appointment. The court may authorize an indigent defense coordinator, court coordinator or, more rarely, the judges themselves to review eligibility and assign counsel. Both approaches have advantages and disadvantages.[5] Direct appointment by the magistrate provides defendants faster access to an attorney, while transfer of request to an agent other than the magistrate allows counties more time to confirm defendants' eligibility by validating self-reported financial information.

Maintaining Indigent Case Processing Records. Whether the appointing authority is the magistrate or another designee of the courts, all participating actors are responsible for maintaining a complete and accurate record of key indigent case processing events. Article 15.17 specifically requires that a magistrate record the following events: (1) the magistrate informing the person of the person's right to request appointment of counsel; (2) the magistrate asking the person whether the person wants to request appointment of counsel; and (3) whether the person requested appointment of counsel. These records are beneficial to state and local governments in monitoring conformance with timeframes specified in the Fair Defense Act.[6]

Determination of Indigence

Prior to the Fair Defense Act, many jurisdictions in Texas did not have formal criteria for determining whether a defendant was indigent.[7] Yet, the process of determining whether the defendant is indigent is arguably one of the most important decisions the courts will make in resolving the issue of representation and meaningful access to court. It is important because, quite often, it literally determines the value of representation the defendant will receive. Moreover, this is the juncture in the proceedings that the court commits to expending substantial financial resources on behalf of the defendant.

Though counties vary in their specific criteria for indigence, whatever the standard, it must be applied equally to all defendants, regardless of whether the defendant is in custody or has been released on bond.[8] Article 26.04(m), Code of Criminal Procedure, provides that "… the court or the courts' designee may consider the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, number and ages of dependents, and spousal income that is available to the defendant." In applying these factors the court is instructed **not** to consider whether the defendant has posted or is capable of posting bail, except to the extent that it reflects the defendant's financial circumstances as measured by the considerations above.[9]

To determine indigence, a number of counties rely on the defendant's net household income and provide that it should not exceed a specified percentage of the U.S. Department of Health and Human Services Poverty Guidelines (revised annually and published in the *Federal Register*). This baseline percentage varies from county to county. For instance, in Galveston County eligibility for assigned counsel

begins at 125 percent of the federal poverty guidelines, whereas in Travis County the standard is 150 percent of poverty.[10]

Eligibility for government assistance programs, such as food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing may be determinative of indigence. A range of financial data can also be considered including spousal income available to the defendant,[11] the value of the real property owned by the defendant at the time of magistration, and the value of the defendant's non-exempt assets. Non-exempt assets and property include cash in hand, stocks and bonds, accounts at financial institutions, and equity in real or personal property that can be readily converted to cash. Some counties consider a defendant automatically indigent if he or she is currently serving a sentence in a correctional institution or is residing in a public mental health facility.[12]

Normally the more serious the crime being charged, the more private legal representation is likely to cost. Certain counties have financial standards that allow defendants charged with more serious crimes to be considered indigent even if their resources exceed the basic requirements. A county may also stipulate that a defendant who does not meet any of the specific financial standards listed in the Local Indigent Defense Plan may "nevertheless be determined indigent if the defendant is otherwise unable to retain private counsel without substantial hardship to the defendant or the defendant's dependents."[13]

Some counties provide for a finding of partial indigence. A defendant may be considered partially indigent if the defendant's net household income exceeds the county's established percentage of the federal poverty level yet does not exceed another determined maximum.[14]

"The indigency determination is made on a case-by-case basis as of the time the issue is raised and not as of some prior or future time."[15] A defendant's status as indigent or not indigent may be reviewed in a formal hearing at any stage of a court proceeding based on evidence of a material change in the defendant's financial circumstances.[16] Upon a determination of indigency, the appointing authority shall sign the form indicating the accused is indigent and appoint an attorney according to the procedures specified in the Local Indigent Defense Plan. The determination should then be recorded and filed with the other orders in the case.[17]

Conclusion

Though it is clear that specific procedures for indigent case processing can vary widely across Texas counties, the magistrate always has a central role in this important function. It is his or her job to ensure that defendants are timely informed of their right to court appointed counsel within 48 hours of arrest, and that they are given the opportunity to formally submit their request in writing. Magistrates have a legal obligation to transfer the request to the appointing authority within 24 hours or, in some counties, to appoint counsel during the magistrate proceeding. In any instance, the magistrate serves as the gatekeeper in ensuring that the statutory and constitutional right of court appointed counsel is done promptly and in a manner that promotes public trust and confidence in our justice system.

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[1] Prior to the 79th legislative session, courts were required to submit its local rules pertaining to indigent defense every year on or before January 1. However, with the passage of House Bill 1701, courts are required to submit its local rules every other year, rather than every year.

[2] Tex. Crim. Proc. Code Ann. article 26.04(n) (Vernon 2004). See model affidavit of indigency promulgated by the Task Force online at: www.courts.state.tx.us/oca/tfid/TFID_policies_and_standards.asp.

[3] Tex. Crim. Proc. Code Ann. article 15.17(a) (Vernon 2004).

[4] *Id.*

[5] *Study to Assess the Impacts of the Fair Defense Act on Texas Counties* (January, 2005). Public Policy Research Institute, Texas A&M University. (www.courts.state.tx.us/oca/tfid/Resources.htm). See Chapter 6, "Speed of Appointment."

[6] Tex. Crim. Proc. Code Ann. Article 15.17(f) provides that a record required under this article may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a).

[7] Catherine Greene Burnett, Michael K. Moore, Allan K. Butcher. "In Pursuit of Independent, Qualified, and Effective Counsel: The Past and Future of Indigent Criminal Defense in Texas," *42 S. Tex. L. Rev. 595 at 617* (2001).

[8] Tex. Crim. Proc. Code Ann. article 26.04 (l) (Vernon 2004).

[9] Tex. Crim. Proc. Code Ann. article 26.04 (m) (Vernon 2004).

[10] See the Galveston and Travis county local indigent defense plan online at: tfid.tamu.edu/.

[11] Only spousal income that is available to the defendant is a permissible factor in making the indigency determination.

[12] A defendant is presumed indigent if he or she is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is the subject of a proceeding in which admission or commitment to such a mental health facility is sought (*e.g.*, Bell, Eastland, and Smith Counties).

[13] See, Galveston County Plan, "Procedures and Financial Standards for Determining Indigence Status."

[14] The American Bar Association, Criminal Justice Section, promulgated the following standards for persons deemed to be "partially" indigent:
Standard 5-7.1. Eligibility; ability to pay partial costs: Counsel should be provided to persons who are financially unable to obtain adequate representation without

substantial hardship. Counsel should not be denied because of a person's ability to pay part of the cost of representation, because friends or relatives have resources to retain counsel, or because bond has been or can be posted.
Standard 5-7.2. Reimbursement, notice and imposition of contribution:
(a) Reimbursement of counsel or the organization or the governmental unit providing counsel should not be required, except on the ground of fraud in obtaining the determination of eligibility.
(b) Persons required to contribute to the costs of counsel should be informed, prior to an offer of counsel, of the obligation to make contribution.
(c) Contribution should not be imposed unless satisfactory procedural safeguards are provided.

[15] *Gray v. Robinson*, 744 S.W.2d 604, 607 (Tex. Crim. App. 1988).

[16] 42 *S. Tex. L. Rev.* 595 at 664.

[17] The Task Force in collaboration with three Texas counties (Collin, Tarrant, and Van Zandt) will perform a study to examine local practices to determine whether a person is indigent and the extent to which verification is cost-effective. The findings and written report are expected to be published in the summer of 2006.

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into custody after determining that they did not possess valid driver's licenses and had outstanding warrants for their arrest. The officer then discovered drug paraphernalia in defendant's purse and a small bottle containing eight rocks of cocaine stuck between the passenger's seat, and the center console. The court of appeals agreed with defendant that the arrest warrants for traffic offenses were wholly lacking in that they were not signed by the magistrate, the officer's return was blank, there was no affidavit attached, and neither warrant set out probable cause. Accordingly, all of the evidence could be suppresed pursuant to the exclusionary rule contained in Article 38.23 of the Code of Criminal Procedure. However, in this particular case, suppression was not required because of (1) the lawful arrest of the driver, together with (2) the officer's ascertainment that the only passenger possessed no valid driver's license. The two factors provided a basis for the officer to inventory the car. Accordingly, the evidence was sufficient to support defendant's conviction because officers testified that the items in defendant's purse could be used to dilute or cut crack cocaine for delivery or sales purposes.

Note: This case was granted PDR by the Texas Court of Criminal Appeals on March 9, 2005. TMCEC will keep you posted to future developments.

B. Search Warrants

1. Did the Pornographic Images of Children on the Defendant's Hard Drive Constitute "Personal Writings?"

Mullican v. State, 157 S.W.3d 870 (Tex. App. – Fort Worth 2005)

Defendant argued that the trial court should have suppressed the pornographic images of children taken from his computer because they were "personal writings" not subject to seizure with an evidentiary search warrant under Article 18.02(10) of the Code of Criminal Procedure. The State responded that pornographic images of children did not constitute personal writings and that, even if they did, the personal writing exception would not have applied because the search warrant was not "evidentiary" (a warrant for "mere evidence)." The court of appeals noted that a search warrant could be issued under Article 18.02(10) to search for and seize property or items "constituting evidence of an offense or constituting evidence tending to show that a particular person committed an offense" and that the child pornography was such evidence. "Personal writings" referred to diaries, memos, and journals that were not intended by the writer to be published to third parties and personal, non-business letters. Judgment affirmed.

2. Did the Trial Court Err by Not Giving Deference to the Magistrate's Determination that Probable Cause Existed to Issue the Search Warrant?

State v. Delagarza, 158 S.W.3d 25 (Tex. App. – Austin 2005)

On review, the State contended the district court erred in granting defendant's motion to suppress evidence of contraband. The court of appeals agreed, finding that the affidavit, when read in a common sense and realistic manner, gave the issuing magistrate a reasonable basis for concluding that contraband could be found at the residence. From the four corners of the affidavit, the magistrate learned that the officer's attention was drawn to the residence by a tip received from an anonymous informer of unknown reliability. The informer described activities that led both the informer and the officer to suspect that drug dealing was taking place. These suspicions were confirmed by four different searches of the trash at that location, in each of which considerable evidence of drug dealing and use was discovered. In light of this preference for the warrant process, and giving the magistrate's probable cause determination the deference it was due, the appellate

court held that the magistrate had a substantial basis for concluding that probable cause to search existed. As such, the district court erred by granting defendant's motion to suppress. The suppression order was reversed and the case was remanded for further proceedings.

C. Exceptions

1. Did Exigent Circumstances Exist that Supported the Warrantless Search of a Residence?

Estrada v. State, 154 S.W.3d 604 (Tex. Crim. App. 2005)

The State argued that the officer had probable cause to conduct a warrantless search of defendant's house. The Court of Criminal Appeals, reversing the court of appeals, agreed. In addition to the odor of marijuana, the officer observed minors under the influence of alcoholic beverages. The minors told the officer that they and other minors had been consuming alcohol and smoking marijuana inside defendant's house. That evidence, in addition to the smell of marijuana on defendant and emanating from the house was enough to establish that there was probable cause for the officer to believe that a crime had been or was being committed. The court of appeals failed to take into account the trial court's finding that there was evidence from the witnesses that it believed established exigent circumstances for a warrantless search.

2. Was Inventory of Defendant's Vehicle after Arrest for Traffic Violations Lawful?

Richards v. State, 150 S.W.3d 762 (Tex. App Houston [1st Dist.] 2004)

Defendant was arrested upon being observed committing multiple fine-only traffic violations (running a stop sign, failing to signal a turn, speeding, and running a stop light). Subsequent to his arrest, contraband was discovered in his automobile while conducting an inventory of its contents. Defendant appealed his conviction of possessing the contraband. Defendant argued that he should have been given alternatives to having his car impounded. The court found that none of the alternatives to impoundment argued by defendant were available and, therefore, that the impoundment of his car was permissible. Police were not required to offer the option of moving the car closer to the curb so that it would be legally parked because, at the time, they did not know who owned the car. They were not required to release the car to defendant's passengers, who were juveniles and unable to take possession of the car due to the fact that the juveniles were all under arrest for criminal mischief and curfew violations.

3. Does Erratic Driving Constitute a Breach of the Peace?

Taylor v. State, 152 S.W.3d 749 (Tex. App Houston [1st Dist.] 2004)

On appeal defendant contended that the evidence seized subsequent to arrest needed to be suppressed, as the arrest was made by a deputy sheriff who was outside of his jurisdiction when he observed defendant driving erratically. The court held that the arrest was proper because defendant's erratic driving behavior amounted to a breach of the peace. The deputy had authority under Article 14.03(d) of the Code of Criminal Procedure to arrest defendant, regardless of jurisdictional boundaries, when the deputy observed defendant driving so erratically that the behavior could be considered a breach of the peace. Affirming the decision of the trial court, the court of appeals held that the deputy had the authority to arrest defendant, the arrest was not illegal, and the evidence seized pursuant to the arrest did not need to be suppressed.

Note: The import of this case should be construed in light of recent legislative changes giving peace officers countywide authority to enforce traffic laws.

Consequences of Refusal to Sign Citation

Does a Defendant who Refuses to Sign a Citation "Interfere with Public Duties?"

Compare: *Berrett v. State*, 152 S.W.3d 600 (Tex. App. Houston [1st Dist.] 2004)

Defendant argued the evidence was insufficient to sustain his conviction for interference with public duties (Section 38.15, Penal Code). The court of appeals disagreed. After being stopped for failure to wear a seat belt, defendant became belligerent with the officer. Defendant began filming the stop on a video camera and voluntarily kept filming and moving his arm out of the officer's reach in an effort to prevent the officer from placing him in handcuffs. On more than 15 occasions, the officer told defendant to put his right arm behind his back, but each time, defendant moved his arm out of the officer's reach and continued to film the encounter in a manner that precluded his arrest. The court held that such conduct, in those circumstances, constituted voluntary action, not a mere omission to act. As a result, the State did not have to prove that defendant had a duty to submit to the arrest. Furthermore, defendant's actions in repeatedly pulling away from the officer and filming the encounter in such a way as to interfere with the arrest were more than "mere speech." Therefore, the evidence was sufficient to sustain the conviction.

Note: Defendant also asserted that he was entitled to a jury charge stating that he was not required to sign a promise to appear in order to obtain his release after receiving such a citation. The court of appeals held

that such was an incorrect statement of the law. Accordingly, the trial court did not err by refusing to place the requested instruction in the charge.

Contrast: Barnes v. State, 166 S.W.3d 416 (Tex. App. – Austin 2005)

On appeal, defendant contended that the evidence was insufficient to sustain her conviction. The appellate court found that defendant's prosecution rested on her lack of cooperation with the officer as he attempted to cite her for speeding. The appellate court held that defendant, who directly or indirectly refused citation in violation of Sections 543.001-.005, could not also be prosecuted under Section 38.15 of the Penal Code. Moreover, on this record, no rational trier of fact could have found beyond a reasonable doubt that defendant negligently interrupted, disrupted, impeded, or otherwise interfered with her detention or arrest by directing her minor child to leave her vehicle and run in an area near fast-moving traffic, by driving her vehicle forward while she was lawfully detained, or by continuously refusing to obey orders regarding officer safety. There was no basis in the record for concluding that the need to repeatedly order defendant to keep her hands visible interfered with either her detention or her arrest. The court of appeals concluded that the evidence was legally insufficient to sustain the conviction. The judgment was reversed, and a judgment of acquittal was rendered.

Malicious Prosecution/ Prosecutor Misconduct

A. Did City's Prosecution for Simple Assault Constitute Malicious Prosecution?

Fazio v. City of Dallas, 2005 Tex. App. LEXIS 1230 (Tex. App. – Dallas 2005)

While at a dinner party, the petitioner grabbed hold of a child's arm to stop the child from running. The child told the investigating officer that she was playing tag with another child when the claimant grabbed her by the arm and told her to sit down. The child's parent filed a complaint alleging assault by contact (Section 22.01, Penal Code). Petitioner was prosecuted by the City Attorney's Office in the Dallas Municipal Court. Subsequent to being not found guilty at trial, the petitioner filed a malicious prosecution lawsuit against the City of Dallas. The court of appeals ruled that there was no evidence to support the petitioner's argument that the City acted without probable cause or with malice in pursuing a prosecution for assault. Petitioner presented no evidence that the City lacked probable cause. In fact, all parties agreed that the petitioner touched the child, though they characterized that touching differently. Because there was no evidence of malicious prosecution, there was no deprivation of a constitutional magnitude entitling the petitioner to a remedy under 42 U.S.C. § 1983 (deprivation of rights) or by extension 42 U.S.C. § 1985 (conspiracy to interfere with civil rights).

B. After a Mistrial is Brought About by Prosecutor Misconduct, When Is a Retrial Barred by Double Jeopardy?

Ex Parte Wheeler, 146 S.W.3d 238 (Tex. App. – Fort Worth 2004)

Prosecutor's misconduct (violation of Rule of Evidence 411) resulted in mistrial. Upon second prosecution, defendant's motion to dismiss with prejudice was denied. In utilizing the three-prong test recently promulgated by the Texas Court of Criminal Appeals in *Ex Parte Peterson*, 117 S.W.3d 804 (Tex. Crim. App. 2003), the court of appeals held that the prohibition against double jeopardy barred a second prosecution.

All judges and prosecutors should be familiar with the *Peterson* three-prong test for determining if jeopardy would attach:

1) Did manifestly improper prosecutorial misconduct provoke the mistrial?

2) Was the mistrial required because the prejudice produced from that misconduct could not be cured by an instruction to disregard?

3) Did the prosecutor engage in that conduct with the intent to goad the defendant into requesting a mistrial or with conscious disregard for a substantial risk that the trial court would be required to declare a mistrial?

C. Should Prosecutors Call Defense Counsel to the Witness Stand?

Flores v. State, 155 S.W.3d 344 (Tex. Crim. App. 2004)

Permitting the State to call defense counsel as a witness in a criminal trial undermines the adversarial process and inevitably confuses the distinction between advocate and witness and argument and testimony. It is only allowed if required by a compelling legitimate need.

D. Should Prosecutors during Trial Call Themselves to Testify as Witnesses?

Ramon v. State, 159 S.W.3d 927 (Tex. Crim. App. 2004)

During defendant's trial, the trial court allowed the prosecutor to take the stand and testify about a collateral matter, over defense objection. The defense was not permitted to cross-examine the prosecutor, and after a sidebar discussion, the trial court sustained the defense motion to strike the prosecutor's testimony. The trial court instructed the jury to disregard the prosecutor's testimony, but denied the defense request for a mistrial. The prosecutor continued to prosecute the case and made reference to the subject of her testimony during closing arguments. Review was granted to determine whether the appellate court erred in finding no harmful error. The

reviewing court held that given the strength of the evidence against defendant, the trial court's instruction to the jury to disregard the prosecutor's testimony, and the tangential nature of that testimony, it did not find an abuse of discretion in the trial court's failure to declare a mistrial.

While, in light of the overwhelming weight of the evidence, the Court affirmed the decision of the court of appeals, the Court stated that permitting the prosecutor to testify was not only error, but also a violation of Rule 3.08(a) of the Texas Disciplinary Rules of Professional Conduct. It then noted that this was the second time in one year that the prosecutor's misconduct was brought to the attention of the Court of Criminal Appeals. See above, *Flores v. State*, 155 S.W.3d 344 (Tex. Crim. App. 2004)

Education Code: *In Pari Materia* Arguments

A. Are "Criminal Trespass" and "Trespass-on School-Grounds" *in Pari Materia*?

In re JMR, 149 S.W.3d 289 (Tex. App. – Austin 2004)

Appellant, a child, was charged with criminal trespass when he returned to his former campus after having been officially removed and enrolled in an alternative-learning center. He argued that the trespass-on-school-grounds statute (Section 37.105, Education Code) was subsumed by the general criminal trespass statute (Section 30.05, Penal Code) and that, therefore, the *in pari materia* doctrine required the State to charge him with that offense, as it more specifically described his conduct. (Defendant also challenged the district court's jurisdiction to hear a Class C misdemeanor, even though the district court was designated as a juvenile court.) The court disagreed, finding that Section 37.105 and Tex. Penal Code Section 30.05 were not *in pari materia*. The criminal trespass and trespass-on-school-grounds statutes effectively operated independently because their objectives were complementary: One protected a property interest; the other guarded the safety of people authorized to be on school grounds. In addition, the two statutes were contained in different legislative acts and required different elements of proof. The court also found that the petition sufficiently informed appellant of the crime with which he was charged and allowed him to prepare an adequate defense, despite the State's failure to list the correct first name of the principal, who testified as the owner of the property.

B. Are Aggravated Assault and Hazing *in Pari Materia*?

Ex parte Smith, 152 S.W.3d 170 (Tex. App. – Dallas 2004)

Defendant was a member of the Alpha Phi Alpha fraternity at Southern Methodist University (SMU). He, along with several others, required Braylan Curry, another SMU student who was pledging Alpha Phi Alpha, to consume large quantities of water as part of Curry's initiation. As the result of drinking the large amount of water, Curry suffered convulsions and was hospitalized in intensive care. Smith was charged by indictment with the felony offense of aggravated assault causing serious bodily injury. By pretrial *writ of habeas corpus*, appellant challenged the district court's jurisdiction over the prosecution. Appellant claimed the charge arose out of a hazing incident and, because hazing (Section 37.152, Education Code) is more specific, prosecution should be brought under it. Because hazing is a misdemeanor, appellant argued, the district court has no jurisdiction over the prosecution. Following a hearing, the trial court denied appellant's requested relief. The court of appeals held that the appellant's *in pari materia* claim is not cognizable by pretrial *writ of habeas corpus*. In affirming the trial court's order, the court of appeals opined that *habeas corpus* should not be used against a valid statute or ordinance to test the validity of a criminal complaint. It should only be used when the defendant is entitled to release.

Note: This case was granted PDR by the Texas Court of Criminal Appeals on June 29, 2005. TMCEC will keep you posted to future developments.

Attorney *Pro Tem* Issues

A. Is a Prosecutor, Mistakenly Labeled a "Special Prosecutor," without the Authority to Appeal a Pretrial Ruling?

State v. Ford, 158 S.W.3d 374 (Tex. App. – San Antonio 2005)

Though mislabled a "special prosecutor" the attorney was properly appointed as an attorney *pro tem* and thus had all of the prosecutor's lawful powers, including the authorities to appeal the pretrial ruling. Citing *State v. Rosenbaum*, 852 S.W.2d 525, 525-30 (Tex. Crim. App. 1993), the court of appeals explained that there is a difference between "special prosecutors" and "attorneys *pro tem*." A special prosecutor is **permitted** to participate in a particular case to the extent allowed by the prosecuting attorney without being required to take the constitutional oath of office. An attorney *pro tem* is **appointed by the court** and, after taking the oath of office, assumes the duties of the attorney and in effect replaces the prosecuting attorney. (Noting the distinctions between these terms, the Court of Criminal Appeals cautioned courts in using the terms synonymously.)

While the the attorney improperly labeled a "special prosecutor" did not take the oath required of attorneys *pro tem*, the defendant waived the issue by not raising it prior to the appeal.

B. Was the Attorney *Pro Tem* "Competent" to Represent the State?

Shea v. State, 167 S.W.3d 98 (Tex. App. – Waco 2005)

Attorney *pro tem* appointed to prosecute pursuant to Article 2.07 of the Code of Criminal Procedure was "competent" to represent the State though he was on federal probation for misprision of felony. Because the term "competent" is not defined by statute, the court of appeals used the plain meaning of the term (*i.e.,* "legally qualified and adequate"). Thus, the court looked to the State Bar to determine if attorney was in good standing to practice law. Section 81.102 of the State Bar Act provides that only members of the State Bar may practice law in Texas, with some exceptions. The State Bar Rules define a "member in good standing" as a member of the State Bar who is not in default in payment of dues and who is not under suspension from practice. As attorney was in good standing, the court of appeals found that he was "qualified" as required by the statute.

Transportation Code

A. What Constitutes "Reasonable Suspicion" for Following Too Closely?

Ford v. State, 158 S.W.3d 488 (Tex. Crim. App. 2005)

A peace officer pulled defendant's vehicle over for following another car too closely, in violation of Section 545.062(a) of the Transportation Code. When defendant lowered his passenger-side window, the officer noticed a strong odor of marijuana. A search of the car produced codeine and marijuana. The Texas Court of Criminal Appeals held that the court of appeals erred in holding that the evidence presented at the suppression hearing supported the trial court's finding of reasonable suspicion. The officer only testified that he saw defendant's car following another car at a distance that the officer believed was insufficient. Without specific, articulable facts, the court had no means in assessing whether the officer's opinion was objectively reasonable. Reliance on the officer's special training was insufficient to establish reasonable suspicion absent objective factual support. The peace officer's testimony was conclusory in character and thus wholly inadequate. The court reversed the judgment of the court of appeals and remanded the case to the trial court.

B. Is a Turn Signal Required when Turning Out of a Parking Lot?

State v. Ballman, 157 S.W.3d 65 (Tex. App. – Fort Worth 2004)

The prosecution argued that the trial court erred in granting defendant's motion to suppress, as officer had probable cause to stop defendant when the defendant committed a traffic violation by failing to use his turn signal (Section 542.001, Transportation Code). Affirming the judgment of the trial court, the court of appeals concluded that, as the parking lot was not a highway but a privately maintained place, the signaling requirement did not apply to defendant's turn. Furthermore, the officer did not have reasonable suspicion to stop the vehicle, because the officer had no identifying information on the driver of the vehicle at the time a concerned citizen saw the vehicle being driven erratically. Therefore, the trial court properly applied the law to the facts and correctly granted defendant's motion to suppress.

C. Did the Record Support the Trial Court's Conclusion that 3.2 Miles before Executing a Traffic Stop was Unreasonable?

State v. Dixon, 151 S.W.3d 271 (Tex. App. - Texarkana 2004)

After being stopped for failure to use turn signal (Section 545.104, Transportation Code), police found contraband on defendant's passenger. Defendant was charged and filed a motion to suppress, which the trial court granted. On appeal, the court affirmed. The State presented no argument in support of one point and admitted that the law allowed the trial court to decide the pretrial motion to suppress without hearing testimony. The State's lack of briefing on the matter waived the issue. The trial court suppressed the contraband seized subsequent to the alleged traffic violation because it found that a 3.2-mile delay between the officers' claimed observations of a traffic offense and the ultimate stop was not within a reasonable time or a reasonable distance after the alleged violation. Nothing interfered with the officer's ability to stop the vehicle sooner. The record supported the trial court's findings.

Note: This case was granted PDR by the Texas Court of Criminal Appeals on April 27, 2005. TMCEC will keep you posted to future developments.

D. Was the Warrantless Search of the Defendant's Car Following a Traffic Accident Justifed under the Community Caretaking Doctrine?

Weide v. State, 163 S.W.3d 239 (Tex. App. – Austin 2005)

Defendant contended that the trial court erred by admitting the contraband into evidence. The court of appeals reversed, noting that the Fourth Amendment applied to vehicles, and that the history of the statute authorizing the investigation of a peace officer (Section 550.041, Transportation Code) suggested that the provision was intended merely to clarify a peace officer's authority to investigate some traffic accidents that occur on private property rather than

on the public roadways. The court also held that the circumstances presented at the suppression hearing did not demonstrate that the unidentified officer had probable cause to believe that defendant's vehicle contained evidence of a crime. (The prosecution was unable to even identify the officer who conducted the search, and there is nothing in the record establishing any officer's knowledge that plastic bags were ordinarily used to contain drugs). Furthermore, the record did not suggest that there were suspicious circumstances that would lead an officer to believe that the defendant was in possession of contraband. Also, the search was not justified under the emergency doctrine because it was admitted that it was conducted as part of a criminal investigation.

Ordinance Issues

A. Is the Bedford Sound Ordinance Constitutional?

State v. Holcombe, 145 S.W.3d 246 (Tex. App. Fort Worth – 2004)

Defendant was pulled over for playing his car radio too loudly and was subsequently arrested for driving while intoxicated. The trial court granted defendant's motion to suppress on the basis that the noise ordinance, Bedford, Tex., Code of Ordinances, Ch. 54, Art. II, Section 36 (2002), was overbroad. The State appealed. The court of appeals concluded that the ordinance prohibited noise that unreasonably disturbed or interfered with the peace, comfort, and repose of "neighboring persons of ordinary sensibilities," unless a permit of variance was first obtained. Accordingly, the statute was neither overbroad nor vague. In response to the allegation that such an ordinance is too broad in scope, the court concluded that it was neutral regarding content and location. Thus, it did not reach a substantial amount of First Amendment activity (because it regulated only the volume of expression). As to terms defined in the ordinance, the court held that they were adequately defined and provided sufficent notice under the objective reasonable person standard. The court reversed the trial court's judgment and remanded the case for a trial on the merits.

Note: This case was granted PDR by the Texas Court of Criminal Appeals on April 27, 2005. TMCEC will keep you posted to future developments.

B. Was the Private Driveway a Nuisance that Justified Use of Police Powers?

City of San Antonio v. TPLP Office Park, 155 S.W.3d 365 (Tex. App. – San Antonio 2004)

District court determined that the City's decision to close a private driveway was an invalid exercise of the City's police power and a substantial impairment of access to a business park. On review, the court of appeals held that the trial court acted within its discretion in disposing of all claims. There was more than a scintilla of evidence to show the traffic entering and leaving the business park did not create a safety hazard or a nuisance, and that the closure of the private driveway would not promote the public interest.

C. Does an Ordinance Criminalizing Smoking in an Enclosed Public Place Constitute an Unlawful Use of Police Powers?

Ex parte Woodall, 154 S.W.3d 698 (Tex. App. – El Paso 2004)

In 2001, the City of El Paso adopted El Paso, Tex., Code Section 9.50.030(7), an ordinance that prohibited smoking in all enclosed public places within the city, including food establishments, nightclubs, and bars. The petitioner, co-owner of the Naked Harem Nightclub, was smoking in the club when an officer asked her to extinguish the cigarette. When she refused, the officer issued her a citation ordering her to appear in municipal court. The owner petitioned the district court for pretrial *habeas* relief claiming that the anti-smoking ordinance violated Tex. Const. Art. 1, Section 17 by restricting her use of her private property. The court of appeals upheld the ordinance as a valid exercise of the city's police powers. The appellate court lacked jurisdiction over the bar owner's takings claim, because it was not ripe for review at the pretrial stage. The district court order denying *habeas corpus* relief was affirmed.

D. Is it Constitutional to Delegate the Authority to Create Jailable Sexually Oriented Business Ordinances to Municipalities?

Ex parte Smalley, 156 S.W.3d 608 (Tex. App. – Dallas 2004)

Chance Renee Smalley, a dancer at an adult cabaret called Baby Dolls, was charged by information with recklessly touching a customer by rubbing her buttocks against the clothed genitals of the customer while appellant was exposing a portion of her breast, in violation of Section 41A-18.1(a) of the Dallas City Code. Appellant filed a pretrial application for *writ of habeas corpus* challenging the validity of Section 41A-18.1. She contended that Section 243.010(b) of the Local Government Code, making any violation of a municipal ordinance related to sexually oriented businesses punishable as a Class A misdemeanor is an unconstitutional delegation of authority from the Legislature to municipalities because the statute is undefined and grants unlimited authority to municipalities. Following a hearing, the district court denied appellant relief.

The court of appeals concluded that because Chapter 243 permits municipalities to regulate employee/

customer conduct and punish violations as Class A misdemeanors and such is not an unconstitutional delegation of authority, and that Section 41A-18.1(a) of the Dallas City Code was not void. Therefore, the district court did not abuse its discretion in denying appellant the relief sought by her application for *writ of habeas corpus*.

E. Did the District Court Err in Granting Summary Judgment for the City in Non-Conforming Land Use Case?

Baird v. City of Melissa, 2005 Tex. App. LEXIS 7132. (Tex App. – Dallas 2005)

Trial court did not err in ordering a recreational vehicle (RV) park owner to remove RVs from her property as the plain language of the City of Melissa Comprehensive Zoning Ordinance prohibited uses that were not specified as "permitted" under the schedule, and that did not list "RV park" as a permitted use.

Note: This case is a good reminder that habitual violation of local ordinances, even if they carry criminal penalties, sometimes requires the use of civil litigation.

Substantive Law Matters

A. Did the State Violate the Law of Trespass in its Efforts to Crack Down on the Sale of Alcohol to Minors?

Phillips v. State, 161 S.W.3d 511 (Tex. Crim. App. 2005)

Defendant pled *nolo contendere* to selling alcohol to a minor. Finding that the trial court erred in denying defendant's motion to suppress, the court of appeals remanded the case for further proceedings. The State appealed. The court of appeals held that the minor was a trespasser and was not an authorized representative of the Texas Alcoholic Beverage Commission (TABC) under Section 101.04 of the Alcoholic Beverage Code. On appeal to the Texas Court of Criminal Appeals, the State argued that suppression was improper as the minor was an authorized representative of the TABC and, therefore, was statutorily authorized to enter the premises. The Court of Criminal Appeals agreed, finding that because minors in this situation acted at the specific request of TABC officers and on behalf of the TABC to enforce the provisions of the TABC Code through sting operations, they should not be considered trespassers even in the face of a no trespassing sign. Further, by accepting a license or permit to sell alcohol, the bar consented to inspection by TABC agents. The minor was recruited by and under the immediate supervision of a TABC agent to help conduct a sting operation that was expressly contemplated by the Legislature. Therefore, the minor was not a criminal trespasser. Since police officers, TABC agents, or the minor violated no laws, the trial judge did not err in denying defendant's motion to suppress. The decision of the appellate court was reversed, and the ruling of the trial court denying the motion to suppress was upheld.

B. When a Defendant is Lawfully Arrested, May the Defendant Assert a Necessity Defense?

Bowen v. State, 162 S.W.3d 226 (Tex. Crim. App. 2005)

Necessity defense under Section 9.22(3) of the Penal Code was available on a charge of resisting arrest, notwithstanding the restriction on the use of self defense, because a legislative purpose to exclude the necessity did not plainly appear in the Penal Code. Defendant's knowledge that she was being placed under arrest was irrelevant to the necessity instruction.

C. Is the Texas Criminal Justice System Ready for the 21st Century, Threats Via Email?

Messimo v. State, 144 S.W.3d 210 (Tex. App. – Fort Worth 2004)

Defendant and the victim had a disagreement, leading to a physical altercation. Shortly thereafter, the victim began receiving threatening emails. Defendant was subsequently charged with harassment by electronic communication (Section 42.07(a)(2), Penal Code). Defendant claimed that the victim had stolen defendant's email password and was sending threatening messages to herself. A jury found defendant guilty. The court affirmed, rejecting defendant's contention that the trial court erred in overruling her motion to dismiss and to prevent the prosecution from introducing evidence that the State failed to disclose pursuant to a discovery order. The contested evidence consisted of emails that were provided to defense counsel on the day of trial. The court of appeals stated that it was apparent from a verbal exchange between the trial judge and defense counsel that the judge expected defense counsel to pick up the documents, but counsel failed to do so. Additionally, the trial court did not abuse its discretion in admitting certain emails over a lack-of-authentication objection pursuant to Texas Rule of Evidence 901. For example, email was sent to the victim's email address shortly after she and defendant had a physical altercation, and the email referenced that altercation. Additionally, the victim recognized defendant's email account address. The court affirmed the judgment.

D. When a Defendant is Voluntarily Absent from the State, Does that Toll the Statute of Limitations for Bail Jumping or Failure to Appear?

Ex parte Martin, 159 S.W.3d 262 (Tex. App. – Beaumont 2005)

Pursuant to Article 12.05 of the Code of Criminal Procedure, absence from the State after failing to appear or bail jumping tolls the statute of limitations for the underlying offense but does not toll the limitation period as to bail jumping or failing to appear (Section 38.10, Penal Code).

E. May a Business that Holds an On-Premises Alcoholic Beverage Permit Host a Poker Tournament?

Opinion No. GA-0335 (6/20/05)

A holder of an on-premises alcoholic beverage permit may not, without violating both Section 47.04(a) of the Penal Code and Rule 35.31 of the Alcoholic Beverage Commission, host a poker tournament in which participants risk money or any other thing of value for the opportunity to win a prize. A holder of an on-premises alcoholic beverage permit may, without violating either Section 47.04(a) of the Penal Code or Rule 35.31 of the Alcoholic Beverage Commission, host a poker tournament in which participants do not risk money or any other thing of value for the opportunity to win a prize.

Juvenile Law Issues

A. Once a Minor is Accused of Driving Under the Influence of Alcohol, is the Statute Allowing DPS to Administratively Suspend the Minor's Driver's License Unconstitutionally Vague?

Zaborac v. Texas Department of Public Safety, 168 S.W.3d 222 (Tex. App. – Fort Worth 2005)

A police officer responded to an intoxicated driver call and saw a truck matching the vehicle's description. The truck left a parking lot at a high rate of speed and fishtailed at an intersection before turning onto another street. The truck drove across the front yard of a residence to avoid a roadblock. The truck then drove across a field before finally coming to a stop. The officer smelled alcohol on the 17-year-old driver's breath and noticed that his eyes were bloodshot and watery. The officer performed a horizontal gaze nystagmus test on the driver and observed four clues that suggested the driver was intoxicated. In addition, he found 11 cans of beer in the vehicle. The defendant was arrested for driving under the influence of alcohol (Article 106.041, Alcoholic Beverage Code), a Class C misdemeanor, prohibiting a minor with any detectable amount of alcohol from operating a motor vehicle. The defendant's driver's license was suspended pursuant to Section 524.012 of the Transportation Code. On appeal, defendant challenged the constitutionality of the statute, claiming that it was void for vagueness. The court of appeals held that the statute in question gave the driver fair notice of the type of conduct that would result in license suspension. The word "detectable" had a plain and ordinary meaning that could be understood by a person of ordinary intelligence. Given the totality of the circumstances, the officer did not arbitrarily detect alcohol in the driver's system but articulated several factors indicating he had alcohol in his system, which were all also commonly cited in driving while intoxicated cases. The court of appeals affirmed the trial court's judgment.

B. During the "Taking" of a Juvenile Statement, May a 16 Year-Old Murder Suspect Invoke His Fifth Amendment Right?

In re H.V., 2005 Tex. App. LEXIS 2088 (Tex. App. – Fort Worth 2005)

Juvenile defendant was charged with murder. District court suppressed defendant's statement to police, finding that defendant had invoked his Fifth Amendment right to have counsel present. The juvenile court also suppressed defendant's gun as the fruit of his statement. The State appealed.

The State argued that the trial court was incorrect as a matter of law when it found that defendant unambiguously invoked his right to counsel during an interview with a municipal judge acting as a magistrate at a juvenile processing office. The court of appeals disagreed, finding that 16-year-old defendant invoked his Fifth Amendment right to counsel with sufficient clarity, as interrogation should have ceased. Defendant asked to call his mother and wanted her to ask for an attorney. In response to a comment from the magistrate that he could request an attorney, he responded that he was only 16. His gun was also properly suppressed as the fruit of the subsequent improper police interrogation because all interrogation should have ceased prior to his statement regarding where he had hid the gun. Thus, the statement could not be other than the product of compulsion, subtle or otherwise; case law regarding "unwarned" statements did not apply.

Tow Hearings

Is There Any Point in Even Having a Tow Hearing?

AJ's Wrecker Service of Dallas v. Salazar, 165 S.W.3d 444 (Tex. App. – Dallas 2005)

Salazar was driving home from a doctor's appointment. She saw an elderly woman carrying groceries and offered to drive the woman home. When they got to the woman's apartment, Salazar parked her car, with the handicap placard properly

displayed. Although Salazar did not park her car in a fire lane, it was not parked in a marked parking space. Salazar helped the woman carry her groceries into her apartment. Approximately 20 minutes later, Salazar left the apartment and discovered her car was gone.

AJ's Wrecker Service notified Salazar by mail that it had possession of her car. After several failed attempts to retrieve her car, Salazar went to court and requested a magistrate's tow hearing. The justice of the peace conducting the hearing determined that AJ's did not have probable cause to remove Salazar's car. AJ's defied two court orders. Finally, with the intervention and presence of a Dallas County Constable, Salazar obtained her car from AJ's. AJ's had possession of Salazar's car for approximately 60 days.

Salazar filed suit alleging causes of action for violations of the Transportation Code and city ordinances, negligence *per se*, promissory estoppel, negligent hiring, waiver, abuse of process, equitable estoppel, conversion, civil theft, and trespass to chattel.

The court of appeals held that all of Salazar's civil causes of action were pre-empted by the Interstate Commerce Commission Termination Act.

Note: In direct response to an Attorney General Opinion (*No. GA-0316*), in which the Arlington Municipal Court concluded that there was no probable cause to tow and that a tow hearing is not an appealable matter, the tow industry successfully lobbied the Legislature to eliminate the general authority of magistrates and municipal courts in cities with a population of 1.9 million (*i.e.,* Houston) to conduct tow hearings. Now such hearings can only occur in a justice court. In the event of an unfavorable ruling by the justice court, tow operators can appeal the court's decision without posting bond. While municipal judges, in their magistrate capacity (and the Houston Municipal Court), will no longer have the authority to conduct tow hearings, all municipal courts retain jurisdiction to hear the criminal offense of illegal towing (Section 684.085, Transportation Code). In fact, the Legislature raised the maximum fine from $500 to $1,500 per offense. City attorneys are reminded that in these cases, and all other cases, restitution is limited to either $500 upon conviction (Article 45.041(b)(2), Code of Criminal Procedure) or an amount *not to exceed the fine assessed* in cases resulting in deferred disposition (Article 45.051(b)(2), Code of Criminal Procedure).

This is not the first time that municipal courts have been impacted by the Interstate Commerce Commission Termination Act (ICCTA). The City of San Antonio had one of its local towing ordinances preempted under the ICCTA in 2001 See *Stuckey v. City of San Antonio*, 260 F.3d 424 (5th Cir. 2001). In 1999, the Legislature made it a criminal offense for a railway company to obstruct a railroad crossing (Section 471.007, Transportation Code). In the appeal of a civil law suit, the U.S. Court of Appeals for the Fifth Circuit concluded that the ICCTA expressly preempted Section 471.007 of the Transportation Code. *See Friberg v. Kansas City S. Ry. Co.*, 267 F.3d 439, 444 (5th Cir. 2001). Believing the statute to essentially be dead in the water, most local governments have stopped attempting to utilize Section 471.007. In June, the Office of the Attorney General in *Opinion No. GA-0331* reiterated what most of us already believed was settled in *Friberg*; specifically, Article 471.007 is preempted by federal law.

Could the criminal penalty for illegal towing be next on the preemption chopping block? No doubt that the attorneys for the tow operator will argue that such criminal laws should be deemed preempted by the ICCTA. In considering such arguments, city attorneys and municipal judges should keep in mind that in 2002, the U.S. Supreme Court ruled that the ICCTA does not bar a state from delegating to municipalities the authority to establish "safety regulations" to tow trucks. (See *City of Columbus v. Ours Garage and Wrecker Service*, *Inc.* 122 S.Ct. 226 [2002]). Hence, it appears that ICCTA is intended only to prohibit unauthorized economic regulation, not the passage of laws relating to the accepted use of local police powers.

Procedural Law Issues

A. At Trial, Is the Defendant Entitled to Formal Notice that the State is Seeking an Affirmative Finding of Family Violence?

Thomas v. State, 150 S.W.3d 887 (Tex. App. – Dallas 2004)

Defendant argued that the trial court erred by entering an affirmative finding of family violence, as he was provided no notice that the State was seeking such a finding. The appellate court initially noted that the State did not attempt to prove that defendant had previously been convicted of an assault involving family violence, as the evidence before the trial court simply showed the single family-violence assault alleged in the information. The appellate court found that the State sufficiently notified defendant it intended to seek a family violence finding because, in the information, the State alleged that defendant assaulted a family member; therefore, the trial court had no discretion in entering a family violence finding once it determined the offense involved family violence. The court of appeals concluded that, because defendant could not avoid the legal reality of his familial relationship with the victim, a

more formal notice from the State would not have changed the outcome of his case.

B. Can Defendant's Pleading Guilty to Theft in Municipal Court Come Back to Haunt Him?

U.S. v. Lamm, 392 F.3d 130 (5th Cir. 2004)

Defendant's prior Texas theft conviction for shoplifting item valued less than $50 was not sufficiently similar to insufficient funds check offense listed in Sentencing Guidelines as excludable when determining criminal history score and, thus, was includable; although offenses were subject to similar punishment, theft offense involved heightened risk of physical confrontation and harm to others.

C. Was the Failure of the State to Prove Venue Harmless Error?

State v. Blankenship, 2005 Tex. App. LEXIS 5083 (Tex. App. – Austin 2005)

The State challenged the judgment of the County Court at Law No. 1 of Travis County, Texas, reversing defendant's judgments of conviction in the Austin Municipal Court, a court of record. The court of appeals initially held that it did not have jurisdiction to hear the appeal because it was not filed by the county attorney but rather by the city attorney with the county attorney's permission. The Texas Court of Criminal Appeals reversed holding the city's assertion that in the notice of appeal was a written express personal authorization by the county attorney and found that the assertion simultaneously complied with Articles 44.01 (as to the notice of appeal) and Article 45.201(c) of the Code of Criminal Procedure (as to authorizing the city attorney to prosecute the appeal). The case was remanded to the court of appeals for consideration in light of the Court of Criminal Appeals decision.

Thirteen complaints were filed against defendant in the municipal court alleging violations of certain city ordinances, and each complaint alleged that the offense occurred in the territorial limits of the City of Austin as required by Article 45.019(c) of the Code of Criminal Procedure. Defendant was found guilty of five offenses of developing or changing the use of property without first obtaining a site plan approval and release by the City, and found guilty of three offenses of failing to observe a stop-work order posted at the site of the property involved.

The issue on appeal was the consequence of the failure of the prosecution to prove venue as laid under the particular circumstances of the cases. The court of appeals ruled that there was error in the failure to prove venue as laid, but the non-constitutional error was harmless pursuant to Texas Rule of Appellate Procedure 44.2(b) (defects, irregularity, or variance that does not affect substantial rights must be disregarded.). There was no showing that defendant was prevented from presenting a defense. The description placed the property outside the city limits but within the extraterritorial area of the city, over which geographical area the municipal court had sole criminal jurisdiction to try violations of certain city ordinances. The judgments of the county court at law were reversed and the causes remanded to that court for consideration of defendant's other points of error.

Pretrial Motions

A. Is a Pretrial Motion to Suppress an Appropriate Vehicle to Challenge an Element of an Offense?

Wood v. State, 153 S.W.413 (Tex. Crim. App. 2005)

Defendant argued that the arresting police officer had no reasonable suspicion to detain him; therefore, his detention was illegal, and his arrest for evading arrest or detention (Sec. 38.04, Penal Code) should have been suppressed. The court of appeals reversed the trial court's ruling, stating that there were no specific, articulable facts leading to a reasonable suspicion on the part of the officer that would have made the detention lawful. The State appealed, arguing that the court of appeals misapplied Texas law in failing to find that specific, articulable facts, coupled with the rational inferences from the facts, in light of the officer's knowledge, reasonably warranted the officer's detention of defendant for further investigation. The Texas Court of Criminal Appeals held that by asking for the trial judge to suppress the arrest, and the details of his flight and evasion of the detention by the officer, defendant was in effect asking the trial judge to rule on whether or not an offense had actually been committed. The Court further held that because the issue was improperly raised in a pretrial motion to suppress, the court of appeals erred in reversing the trial court's ruling.

B. At Trial, If the Court Grants a Motion to Dismiss On Constitutional Grounds, May the State Appeal?

State v. Stanley, 2005 Tex. App. LEXIS 5935 (Tex. App. – Waco 2005)

Following a bench trial, the trial court granted defendant's motion to dismiss the charge against her on the grounds that the municipal ordinance on which the charge was based is unconstitutional. The State appealed under Article 44.01 of the Code of Criminal Procedure. Defendant filed a motion to dismiss the appeal contending that the State has the right to appeal only the pretrial dismissal of an indictment, information, or complaint. The court of appeals

granted the motion and dismissed the appeal holding that Article 44.01 does not allow the State to appeal the granting of a dismissal motion once the trial on the merits commences because jeopardy has attached.

C. Who has Jurisdiction to Hear State's Appeal of a Motion to Quash Granted in a Non-Record Trial Court?

State v. Alley, 158 S.W.3d 485 (Tex. Crim. App. 2005)

The complaints accused defendants of separate offenses of failure to stop at a stop sign. The court of appeals dismissed the State's appeal for lack of jurisdiction, finding that State should have brought its appeals to the county courts. In affirming the court of appeals, the Texas Court of Criminal Appeals held that Article 44.01(f) of the Code of Criminal Procedure spoke only to the precedence of appeals of which the court of appeals had jurisdiction. It could not be read to create jurisdiction or to assume the existence of a jurisdiction that was not elsewhere granted. Article 44.01(a) allowed the State to appeal certain orders. Articles 4.08 and 45.042 of the Code of Criminal Procedure provide that appeals from a justice court had to be taken to the county court.

D. Can a Motion to Quash be Successfully Raised in County Court after a *Trial de Novo*?

Casas v. State, 2004 Tex. App. LEXIS 9352 (Tex. App. – Houston [1st Dist.] 2004)

In his sole issue on appeal, defendant argued that the county court erred in denying his motion to quash because neither the citation, nor the affidavit on the back of the citation, stated an offense. The notice of violation served as the charging instrument. Specifically, defendant contended that because the word paraphernalia was misspelled as "pheraphalia" on the citation and improperly abbreviated as "phera" on the accompanying affidavit, the complaint did not state an offense for which he could prepare a defense. The court of appeals, citing Article 44.181 of the Code of Criminal Procedure, concluded that a county court conducting a *trial de novo* based on an appeal from a justice court or non-record municipal court could dismiss a cause because of a defect in the complaint only if the defendant objected to the defect before the trial began in the justice or municipal court. In this instance, the record did not reflect that defendant objected to the complaint's defect until after the trial in the justice court had already concluded and the cause was on appeal in the county court. Accordingly, the county court did not abuse its discretion in denying the motion to quash.

Trial Issues

A. Did the Judge's Refusal to Recuse Deny Defendant the Right to Election of Punishment?

Roman v. State, 145 S.W.3d 316 (Tex. App. Houston [14th Dist.] 2004)

On appeal defendant challenged the denial of his motion to recuse the trial court judge. Defendant contended that because his motion to recuse was wrongly denied, he was forced to go to the jury for punishment rather than have the choice between the trial court judge and the jury. In affirming the denial of the recusal motion, the court of appeals held that the evidence presented showed that the judge conducted a fair and impartial trial and that he limited the range of punishment because of an opinion he formed based on the specific facts of defendant's case. The statements regarding punishment were not arbitrary. Nothing at the hearing on the recusal motion rebutted the presumption of a neutral and detached judge. The judge's comments represented opinions formed on the basis of facts occurring in the course of the current proceedings, or of prior proceedings, and were the type of opinions that case law had held nearly exempt from causing recusal. The judge's opinions were based on his knowledge of the case from having tried defendant's co-defendant, and he had no improper bias. Any alleged bias was not prejudicial in nature, nor did it deny defendant due process of law.

Note: Though municipal courts are criminal courts, remember that the recusal provisions contained in Rule 18 of the Rules of Civil Procedure govern all Texas trial courts.

B. Does the Excited Utterance Exception to the Hearsay Rule Apply to Statements Conveyed by Translators?

Cassidy v. State, 149 S.W.3d 712 (Tex. App. – Austin 2004)

Defendant contended the trial court erroneously admitted double hearsay and, by so doing, violated his Sixth Amendment confrontation right. His point of error concerned the admission of the officer's testimony recounting the victim's statements at the hospital. Defendant asserted the testimony was double hearsay: first from the victim to the interpreter, and then from the interpreter to the officer. Defendant did not challenge the trial court's ruling that the victim's statements were excited utterances pursuant to Texas Rule of Evidence 803(2). He argued, however, that this exception applied only to the victim's statements to the interpreter, and the trial court erred by not requiring the State to demonstrate that a second exception applied to the interpreter's statements to the officer. Under the circumstances shown by the record, the trial court correctly treated the interpreter as a language conduit who did not add an additional level of hearsay. The admission of the victim's excited utterances to the officer did not violate the Sixth Amendment. If

the admission was error, it was harmless.

C. May an Attorney Waive a Defendant's Right to a Licensed Language Interpreter?

Fonseca v. State, 163 S.W.3d 98 (Tex. App. – Fort Worth 2005)

Although the defendant did not personally waiver his right to an interpreter at the "plea docket," his attorney waived the right by stating that he could interpret. The rule that an attorney acts on behalf of the client was deemed applicable by the court of appeals.

Note: While the Court of Criminal Appeals denied the PDR on this case, it is surprising that the court of appeals seems to rest its reasoning on only two prior cases. One of the two decisions was overruled. The other decision is an unpublished opinion about the waiver of the right to a jury trial in municipal court.

D. May a Justice of the Peace Establish a Standing Pool of Qualified Volunteers to Serve for Jury Duty?

Opinion No. GA-0336 (6/28/05)

Chapter 62 of the Government Code provides broadly for summoning juries for trial in a justice court. Articles 45.027 and 45.028 of the Code of Criminal Procedure additionally provide for summoning a jury for a criminal trial in a justice court. For the trial of a criminal matter, a justice court may utilize the procedures in either Chapter 62 of the Government Code or Articles 45.027 and 45.028 of the Code of Criminal Procedure. While Articles 45.027 and 45.028 do not prohibit utilizing a pool of volunteers for empaneling a venire, such a method must guard against a due process challenge that it systematically excludes a distinctive group in the community from the venire.

Judgments

Is an Irregularity in a Judgment Following a *Trial de Novo* from Municipal Court Correctable *Nunc Pro Tunc*?

Modica v. State, 151 S.W.3d 716 (Tex. App. – Beaumont 2004)

The alleged assault occurred while defendant was inspecting a cosmetology school for violations. Defendant was convicted of assault in the Beaumont Municipal Court and appealed. On *trial de novo* in county court, defendant was once again convicted. On appeal to the court of appeals, defendant argued that the trial court erred by holding in its judgment that defendant was convicted of "City Appeal – Other," which is not an offense under Texas law. Therefore, the judgment was void, and defendant was entitled to appropriate relief.

The opinion of the court of appeals is a rare and refreshing review of the case law relating to judgments. In reforming the judgment of the trial court, substituting the properly-worded offense "assault" for the improperly worded term "city appeal – other" wherever necessary, the court affirmed stating that "a judgment is void only in very rare situations, usually due to a lack of jurisdiction." Examples of when a judgment of conviction for a crime is void are when (1) the document purporting to be a charging instrument (*i.e.,* indictment, information, or complaint) does not satisfy the constitutional requisites of a charging instrument, thus the trial court has no jurisdiction over the defendant; (2) the trial court lacks subject matter jurisdiction over the offense charged, such as when a misdemeanor involving official misconduct is tried in a county court at law; (3) the record reflects that there is no evidence to support the conviction; or (4) an indigent defendant is required to face criminal trial proceedings without appointed counsel, when such has not been waived. "The written judgment is not itself the conviction but evidence, among other things, that a conviction has occurred. And while it is true that an appeal may not be taken until a written judgment has been entered, it is not the signing of the judgment that constitutes the "appealable event"; it is the pronouncement of sentence in open court that is the appealable event."

Note: This case also addressed the authority of someone to prosecute as an attorney *pro tem*. The trial court appointed a criminal district attorney *pro tem* to prosecute defendant, but the oath of office portion of the order did not appear to have been executed. The court of appeals held that Article 2.07(c) of the Code of Criminal Procedure was not the type of evidentiary or procedural rule that belonged to an accused and that had to be protected unless expressly waived. Because defendant failed to complain in the trial court, the issue was not preserved for appellate review.

Pro Se Issues

What are the Responsibilities of *Pro Se* Defendants on Appeal?

Gleason v Isbell, 145 S.W.3d 354 (Tex. App. – Houston [14th Dist.] 2004)

In a nutshell, Michael Gleason is apparently not a big fan of the City of Pasadena. Subsequent, to an unsatisfactory encounter with the city that included being prosecuted in municipal court, Mr. Gleason attempted to file a lawsuit against a wide range of city officials (including the municipal judge and city attorney) in their official and personal capacities. Subsequent to the district court granting summary judgment against Mr. Gleason, he appealed. The opinion by the court of appeals is important, not in that it sets forth any new precedent, but in the way it illustrates that even appellate courts face the

difficulties of adjudicating individuals appearing *pro se*. Excerpts of Gleason's rhetoric reveal him to be disrespectful. The court's published decision reads at times like a warning to anyone who thinks that those who proceed without counsel are immune from discipline. To this end, it is evident why the court opted to publish this opinion.

Expunctions

A. Did the City Have Standing to Oppose Employee's Expunction?

City of Fort Worth v. Tuckness, 165 S.W.3d 425 (Tex. App. – Fort Worth 2005)

After a misdemeanor assault charge against appellee, a Fort Worth police officer was dismissed in Parker County. He successfully petitioned to have the dismissed charge expunged. The officer then requested a hearing to recover back pay. His employer, appellant City of Fort Worth, moved to set aside the order of expunction because the city was entitled to notice of the officer's petition for expunction pursuant to Article 55.02, Sections 2(b)(8) and (c) of the Code of Criminal Procedure. The court of appeals disagreed, finding that because the city was not a party to the expunction proceedings, was not bound by the expunction order's mandate to destroy records or to return them, and would not suffer, by virtue of the expunction order, any peculiar injury not suffered by the public generally, the city lacked standing to challenge the order of expunction. The judgment was affirmed.

B. Was Evidence Sufficient to Grant Expunction Arising from Arrest for Misdemeanor Assault?

Collin County District Attorney's Office v. Dobson, 167 S.W.3d 625 (Tex. App. – Dallas 2005)

Defendant accused of misdemeanor assault was not entitled to expunction due to insufficiency of evidence. Defendant has not established that the alleged offense was outside of the two-year statute of limitations or that the charge against her was the product of mistake, false information, or lack of probable cause.

Mandamus of a Municipal Court

A. Does a Court of Appeals Have the Authority to *Mandamus* a Municipal Judge?

In re Chang, 2004 Tex. App. LEXIS 9945 (Tex. App. – Houston [1st Dist] 2004)

Applicant for *writ of mandamus* in court of appeals requested that the municipal judge be ordered to: "remove each defendant's case from the jury trial docket, provide each defendant with a copy of the complaint, and reschedule each case to a pretrial hearing not less than 17 days to, at the very least, arraign each defendant and to allow each defendant to file pleadings and raise exceptions to the form or substance of the complaint … ." In dismissing the petition for lack of jurisdiction, the court explained that its *mandamus* jurisdiction is governed by Section 22.221 of the Government Code and that Section 22.221 expressly limits the court or appeals *mandamus* jurisdiction to: (1) writs against a district court judge or county court judge in the court of appeals' district; and (2) all writs necessary to enforce the court of appeals' jurisdiction. As it was not asserted that issuance of the writ was necessary for the court of appeals to enforce its jurisdiction, the court ruled that it has no authority to issue a *writ of mandamus* against a municipal judge.

Note: The Houston Court of Appeals was not the only court of appeals to hear the exact same issue in the last three years. The same issue was considered by the Dallas Court of Appeals and the San Antonio Court of Appeals in unpublished decisions.

B. Does a District Court Have the Authority to *Mandamus* a Municipal or Justice Court?

Thompson v. Velsaquez, 155 S.W.3d 551 (Tex. App. – San Antonio 2004)

Under Article V, Section 8 of the Texas Constitution, the district court has jurisdiction to hear an individual's *mandamus* petition filed against justices of the peace concerning municipal misdemeanor convictions. The court of appeals ruled that the district court erred in dismissing the petition. It remanded the case for further consideration consistent with its ruling.

Note: Not to take issue with the holding that a district court has jurisdiction to *mandamus* a justice or municipal court, but the following excerpt from the decision requires clarification that is unfortunately not provided in the opinion: "Thompson filed a petition for *writ of mandamus* in district court seeking *mandamus* relief in relation to two municipal court misdemeanor convictions. The **justices of the peace in the two municipal courts** filed an answer and a motion to dismiss. After a hearing, the trial court dismissed the petition finding that it had no jurisdiction." (Emphasis added) *Thompson* at 552.

Court Administration

A. Did a Former Sanitarian Alleging a "Ticket Fixing" Scheme by the City Health Department Warrant Whistleblower Protection?

City of Houston v. Cotton, 2005 Tex. App. LEXIS 5831 (Tex. App. – Houston [14th Dist.] 2005)

Cotton alleged the City of Houston terminated her employment as a sanitarian in retaliation for her having

reported violations of law by two of her superiors. She had written citations involving a food store and a restaurant. She was later told that the citations would be destroyed. On appeal, the City alleged that the evidence was insufficient. Indeed, the court of appeals agreed that the employee failed to show that destroying the tickets was a violation of law (for reasons set forth below). Further, the facts did not show that the employee's managers were accepting bribes. Also, reporting certain behaviors of the restaurant owners was not the same as reporting incriminating behavior on the part of the employee's manager. The court of appeals reversed the judgment and rendered judgment that the employee takes nothing from the City.

Note: TMCEC is aware of at least three instances in the last year where individuals directly or indirectly associated with municipal courts have been investigated or formally accused of tampering with a governmental document. In light of this troubling trend, local governmental employees, public officials, and legal advisors are urged to not misconstrue the court's opinion in *Cotton*. First, this is not a criminal case; it is an employment law case. Nevertheless, the allegations addressed in the opinion are relevant to municipal court operations. By no means should the holding of *Cotton* be construed as authorizing, excusing, or justifying the destruction of citations. The court of appeals makes it clear that its decision in the civil matter pivoted on the fact that the former employee in claiming whistleblower protection failed to provide substantial proof that a violation of the law occurred (and that subsequently she was terminated for reporting it). The court further explains that if Cotton's supervisor destroyed, tore up, or threw away a citation before it was in the municipal court system, there would have been no violation of the law. If, however, the supervisor or any other person destroyed a citation once it was "in the system," there would have been a violation of the law. One witness testified, and the court did not disagree, that a document was officially designated a "government document" once "it goes through the system." Accordingly, under the unambiguous language of Section 37.10 of the Penal Code (tampering with a governmental document), if managers in the City of Houston Health Department, in the course of their official duties, marked citations as void or decided not to pursue them further without destroying, concealing, removing, or otherwise impairing the verity, legibility, or availability of the citations, their conduct would not violate Section 37.10.

B. May a County Commissioners Court Compel a Justice of the Peace to Use a Vendor under Contract with the County to Collect Court Fines, Fees, and Costs?

Opinion No. GA-0313 (3/21/05)

A defendant in a matter described in Section 706.002 of the Transportation Code who has failed to pay court-ordered fines or costs must pay both (1) a 30% fee if the county has contracted with a collection agent under Code of Criminal Procedure Article 103.0031(g) and (2) a $30 fee if the county has entered a contract under Section 706.002, Transportation Code.

Under Articles 103.003 and 103.0031 of the Code of Criminal Procedure, a county commissioners court may contract with a private collection agent to collect delinquent fines and court costs that were imposed by a justice court. The commissioners court may not thereby abrogate the justice court's authority to collect or otherwise dispose of the fines and costs, however.

Whether a collection agent may collect a 30% collection fee under Article 103.0031(b) of the Code of Criminal Procedure on the $30 administrative fee levied under Section 706.006 of the Transportation Code will depend on whether the $30 fee is 60 days past due.

C. What is the Authority of a Court Without General Civil Jurisdiction to Entertain a Petition for an Order of Nondisclosure?

Opinion No. GA-0330 (6/10/05)

Only a court that has the authority to place a person on deferred adjudication community supervision has jurisdiction to entertain the person's petition for nondisclosure under Section 411.081(d).

D. Is Frustration with the Escalating Rate of Court Costs Limited Only to Judges in Texas?

Greater New Orleans Expressway Commision v. Oliver, 892 So.2d 570 (La. 2005)

Parish judges who refused to collect additional five dollar court costs relating to motor vehicle violations committed on the Huey P. Long Bridge, the Lake Pontchartrain Causeway Bridge, or approaches to and from the bridges were deemed to have no standing to challenge the constitutionality of the court cost.

Dual Office Holding

A. Is a Provision of a Home-Rule City Charter Regulating Dual Office Holding Inconsistent with the Texas Constitution to the Extent that It Prohibits a Municipal Judge from Serving as Justice of the Peace?

Opinion No. GA-0362 (10/3/05)

A provision of a home-rule city charter regulating dual office holding that prohibits a municipal judge from

serving as justice of the peace is not inconsistent with Article XVI, Section 40 of the Texas Constitution.

B. May a County Commissioner Simultaneously Hold the Position of Municipal Judge of a City Located within His County?

Opinion No. GA-0348 (8/19/05)

Neither Article XVI, Section 40, nor Article II, Section 1 of the Texas Constitution prohibits a county commissioner from simultaneously serving as a municipal judge for a municipality within the county. Similarly, the common-law doctrine of incompatibility does not bar the contemplated dual service. While Canons 5(3) and 4H of the Code of Judicial Conduct do not prevent a municipal judge from holding the office of county commissioner, other canons might, and the question as to whether other canons preclude such service is a matter for the State Commission on Judicial Conduct.

IMPORTANT

TMCEC will be charging registration fees of $50 in Fiscal Year 2006-07. The new policy goes into effect September 1, 2006 for all TMCEC registrants except prosecutors. Prosecutors began paying registration fees September 1, 2005.

Change in DSC Certificates

By Gary Nophsker, Manager IV, Texas Education Agency

House Bill 468 became effective on September 1, 2005, and it amends Section 1001.056 of the Education Code to specify that only the course providers may print and issue original and duplicate certificates of course completion.

For years, Texas Education Agency (TEA) has been responsible for printing and issuing Uniform Certificates of Course Completion to the driving safety course providers who then mailed them to the graduates of their courses. All of the certificates were of a standard size, shape, and color, but as of September 1, 2005, course providers may print certificates that are no longer standardized. Although the same data will be on those certificates, they will have subtle (or not-so-subtle) differences from those previously issued by TEA. For example, the provider-printed certificates will no longer exhibit a TEA seal, the data may be positioned differently, they will include a new "reason for the student's attendance," and most importantly, we are requiring that each certificate will have a course provider contact number or email address so that courts may check the validity of the certificate if necessary.

Another change mandated by HB 468 is that course providers (not TEA) will issue duplicate certificates of course completion. That is, after September 1st, course providers will issue the replacement and/or corrected certificates that have previously been issued by TEA. The duplicate certificates should look similar to the course provider's original certificates except that the duplicate certificates will identify both the original and the duplicate certificate numbers as well as any other information that has changed on the duplicate certificate.

To ease this transition, TEA is permitting course providers to "stock up" on the TEA-printed certificates, and TEA will continue selling those stock-piled certificates until they are gone. As of this date, TEA has thousands remaining. Courts can expect to receive more of the "old" certificates immediately following September 1st, but as course providers' stocks are depleted, courts will start receiving more and more of the provider-printed certificates. At this time, a date has not been specified s to when the old TEA-printed certificates may no longer be used, but they will probably be expended in a year or less.

If you have any questions about the driving safety certificates or any other issues involving driver training, please contact either Jim Crenshaw (jim.crenshaw@tea.state.tx.us or 512/936-6781) or Gary Nophsker (gary.nophsker@tea.state.tx.us or 512/936-6788).

For additional information, check www.tea.state.tx.us/drive/courtinfo.html.

COURT COSTS

For Conviction of Offenses Committed on or after September 1, 2005

Changes to amounts assessed for costs underlined.

OFFENSE/DESCRIPTION	State CF	Local TFC	Local CS	State STF	State SJRF	Total*[2]
MUNICIPAL ORDINANCES						
■ Parking (authorized by Sections 542.202-542.203, Transportation Code)	N/A	N/A	*[1]	N/A	N/A	*[1]
■ Pedestrian	N/A	N/A	N/A	N/A	N/A	N/A
■ Other Municipal Ordinances						
• Punishable by a fine of $200 or less	40.00	N/A	N/A	N/A	4.00	44.00
• Punishable by a fine of $201-$500	40.00	N/A	N/A	N/A	4.00	44.00
• Punishable by a fine of more than $500	40.00	N/A	N/A	N/A	4.00	44.00
STATE LAW						
■ Transportation Code, Subtitle C, Rules of the Road						
• Parking & Pedestrian (in school crossing zone)	N/A	3.00	25.00	30.00	N/A	58.00
• Parking & Pedestrian (outside school crossing zone)	N/A	3.00		30.00	N/A	33.00
• Overtaking & Passing a School Bus, Section 545.066	40.00	3.00	25.00	30.00	4.00	102.00
• Other (outside school crossing zone)	40.00	3.00	N/A	30.00	4.00	77.00
• Other (in school crossing zone)	40.00	3.00	25.00	30.00	4.00	102.00
■ Transportation Code, Section 601.192, Failure to Maintain Financial Responsibility						
• First conviction	40.00	N/A	N/A	N/A	4.00	44.00
• Subsequent convictions	40.00	N/A	N/A	N/A	4.00	44.00
■ Education Code						
• Parent Contributing to Nonattendance, Section 25.093	40.00	N/A	20.00	N/A	4.00	64.00
• Failure to Attend School, Section 25.094	40.00	N/A	20.00	N/A	4.00	64.00
■ All other misdemeanors						
• Punishable by a fine of $500 or less	40.00	N/A	N/A	N/A	4.00	44.00
• Punishable by a fine of more than $500	40.00	N/A	N/A	N/A	4.00	44.00

***Add applicable fees and other costs whenever they apply. See next page of chart for additional costs and fees.**

For the purpose of assessing, imposing and collecting court costs and fees, a person is considered to have been convicted if:

(1) a judgment, a sentence or both a judgment and a sentence are imposed on the person;

(2) the person receives community supervision, deferred adjudication or deferred disposition; or

(3) the court defers final disposition of the case or imposition of the judgment and sentence.

*[1] ■ $2-5 court costs for cities with population greater than 850,000 that have adopted appropriate ordinance, regulation or order (mandatory).

*[1] ■ Up to $5 court costs for cities with population less than 850,000 that have adopted appropriate ordinance, regulation or order (optional).

*[2] **FEES (Add the following fees whenever they apply):**

- **Administrative Fee:** The court may impose an administrative fee when a defendant requests to take a driving safety course under Art. 45.0511(d), C.C.P., which allows a court to grant a request before final disposition of a case. The administrative fee may not exceed the maximum possible amount of fine. (Art. 45.0511(f)(2), C.C.P.)
- **Applicable fees for services of peace officers under Art. 102.011, Code of Criminal Procedure (C.C.P.):**
  - **Arrest Fee:** $5 for issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, penal law, or for making an arrest without a warrant. When service is performed by a peace officer employed by the State, 20% ($1) is sent to the State.
  - **Warrant Fee:** $50 for executing or processing an issued arrest warrant or *capias*. When service is performed by a peace officer employed by the State, 20% ($10) is sent to the State.
  - **Summoning a Witness:** $5 for serving a subpoena.
  - **Summoning a Jury:** $5 for summoning a jury.
  - **Service of a Summons** (for a defendant or a child's parents)**:** $35.
  - **Other costs:** Costs for peace officer's time testifying while off duty.
- **Expunction Fee:** $30 fee to expunge the record of an offense involving a minor. (Art. 42.0216, C.C.P.) **Effective January 1, 2006.**
- **Fees Created by City Ordinance:**
  - **Juvenile Case Manager Fee**: $5 fee for every fine-only misdemeanor offense if governing body has passed the required ordinance establishing a juvenile case manager fund. (Art. 102.0174, C.C.P.) **Effective January 1, 2006.**
  - **Municipal Court Building Security Fee:** $3 on every conviction if governing body has passed required ordinance establishing building security fund. (Art. 102.017, C.C.P.)
  - **Municipal Court Technology Fund:** Up to $4 on every conviction if governing body has passed required ordinance establishing the municipal court technology fund. (Art. 102.0172, C.C.P.)
- **Jury Fee:** $3 fee collected upon conviction when case tried before a jury. $3 fee collected upon conviction if defendant had requested a jury trial and then withdrew the request not earlier than 24 hours before the time of trial; fee to be paid even if case is deferred. (Art. 102.004, C.C.P.)
- **Restitution Fee**: $12 optional fee for defendants paying restitution in installments. (Art. 42.037, C.C.P.) **Effective January 1, 2006**
- **Special Expense Fees:** 1) At the conclusion of the deferral period under Article 45.051, C.C.P., upon dismissal of the charge, the court may assess a special expense fee not to exceed the amount of fine assessed but not imposed at the beginning of the deferral. (Art. 45.051(c), C.C.P.); and 2) An amount not to exceed $25 that may be collected for execution of a warrant for *failure to appear* or *violate promise to appear*. City ordinance required to authorize collection. (Art. 45.203, C.C.P.)
- **Time Payment Fee:** The court shall collect a fee of $25 from a person who has been convicted and pays any part of the fine, court costs or restitution on or after the 31st day after the date on which the judgment is entered. One-half ($12.50) is sent to the State. One-tenth ($2.50) is retained locally for judicial efficiency. Four-tenths ($10) are retained locally with no restrictions. (Section 133.103, Local Government Code)
- **Traffic Law Failure to Appear (FTA):** $30 for failure to appear or failure to pay or satisfy a judgment for violation of any fine-only offense **if city has contracted with the Department of Public Safety** to deny renewal of driver's licenses. Two-thirds ($20) are sent to the State. One-third ($10) is retained locally. Applies on any violation that municipal court has jurisdiction of under Art. 4.14, C.C.P. (Chapter 706, T.C.)

Seat Belt & Child Safety Systems: City must remit to the State 50 percent of the fines collected for violations of the seat belt and child safety systems (Secs. 545.412 & 545.413(b), T.C.). Remittiture must be done at the end of the city's fiscal year. (City must remit 50 percent of the $100 to $200 fines. Change applies only to a city fiscal year ending on or after September 1, 2003.)

Excess Fines: Cities with population less than 5,000 must remit all but one dollar of fines and special expenses under Article 45.051, C.C.P. for Title 7, T.C. offenses when the fines and special expenses for such offenses reach 30 percent of the city's budget less any federal money. (Section 542.402(b), T.C.)

Ten Dollar Fees: A court may assess a $10 fee when a defendant elects to take a driving safety course (DSC) on or before the answer date on his or her citation (Art. 45.0511(f)(1), C.C.P.). The court may require the defendant to pay $10 for the court to request the defendant's certified Texas DL record from DPS for DSC (money sent to state). **Effective January 1, 2006.** When a court grants teen court, the court may collect two $10 fees – one is kept by the city for administering teen court, the other is disbursed to the teen court program (Art. 45.052(e) & (g), C.C.P.). A $10 fee may be collected upon dismissing a case: 1) Expired driver's license or expired registration when a defendant remedies it within 10 working days. (Secs. 521.026 & 502.407, T.C.); 2) An inspection certificate expired less than 60 days when defendant remedies it within 10 working days (Sec. 548.605, T.C.).

Name of Cost/Fee	Legal Reference	Abbreviation
Consolidated Fee	Local Government Code, Section 133.102	CF
Traffic Fund	Transportation Code, Section 542.403	TFC
Child Safety Fund	Code of Criminal Procedure, Article 102.014	CS
State Juror Reimbursement Fee	Code of Criminal Procedure, Article 102.0045	SJRF
State Traffic Fee	Transportation Code, Section 542.4031	STF

NOTICE: Effective December 1, 2005, a new $4 court costs goes into effect. Please see new court cost chart on TMCEC website.

Effective September 1, 2005 **Rev. 8/05 – Regular 79th Legislative Session**

COURT COSTS

For Conviction of Offenses Committed on or after December 1, 2005

Changes to amounts assessed for costs underlined.

OFFENSE/DESCRIPTION	State CF	Local TFC	Local CS	State STF	State SJRF	State JSF	Total*[2]
MUNICIPAL ORDINANCES							
■ Parking (authorized by Sections 542.202-542.203, Transportation Code)	N/A	N/A	*[1]	N/A	N/A	N/A	*[1]
■ Pedestrian	N/A	N/A	N/A	N/A	N/A	N/A	N/A
■ Other Municipal Ordinances							
• Punishable by a fine of $200 or less	40.00	N/A	N/A	N/A	4.00	4.00	48.00
• Punishable by a fine of $201-$500	40.00	N/A	N/A	N/A	4.00	4.00	48.00
• Punishable by a fine of more than $500	40.00	N/A	N/A	N/A	4.00	4.00	48.00
STATE LAW							
■ Transportation Code, Subtitle C, Rules of the Road							
• Parking & Pedestrian (in school crossing zone)	N/A	3.00	25.00	30.00	N/A	N/A	58.00
• Parking & Pedestrian (outside school crossing zone)	N/A	3.00		30.00	N/A	N/A	33.00
• Overtaking & Passing a School Bus, Section 545.066	40.00	3.00	25.00	30.00	4.00	4.00	106.00
• Other (outside school crossing zone)	40.00	3.00	N/A	30.00	4.00	4.00	81.00
• Other (in school crossing zone)	40.00	3.00	25.00	30.00	4.00	4.00	106.00
■ Transportation Code, Section 601.192, Failure to Maintain Financial Responsibility							
• First conviction	40.00	N/A	N/A	N/A	4.00	4.00	48.00
• Subsequent convictions	40.00	N/A	N/A	N/A	4.00	4.00	48.00
■ Education Code							
• Parent Contributing to Nonattendance, Section 25.093	40.00	N/A	20.00	N/A	4.00	4.00	68.00
• Failure to Attend School, Section 25.094	40.00	N/A	20.00	N/A	4.00	4.00	68.00
■ All other misdemeanors							
• Punishable by a fine of $500 or less	40.00	N/A	N/A	N/A	4.00	4.00	48.00
• Punishable by a fine of more than $500	40.00	N/A	N/A	N/A	4.00	4.00	48.00

***Add applicable fees and other costs whenever they apply. See next page of chart for additional costs and fees.**

For the purpose of assessing, imposing and collecting court costs and fees, a person is considered to have been convicted if:

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(3) the court defers final disposition of the case or imposition of the judgment and sentence.

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  - **Warrant Fee:** $50 for executing or processing an issued arrest warrant or *capias*. When service is performed by a peace officer employed by the State, 20% ($10) is sent to the State.
  - **Summoning a Witness:** $5 for serving a subpoena.
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- **Special Expense Fees:** 1) At the conclusion of the deferral period under Article 45.051, C.C.P., upon dismissal of the charge, the court may assess a special expense fee not to exceed the amount of fine assessed but not imposed at the beginning of the deferral. (Art. 45.051(c), C.C.P.); and 2) An amount not to exceed $25 that may be collected for execution of a warrant for *failure to appear* or *violate promise to appear*. City ordinance required to authorize collection. (Art. 45.203, C.C.P.)
- **Time Payment Fee:** The court shall collect a fee of $25 from a person who has been convicted and pays any part of the fine, court costs or restitution on or after the 31st day after the date on which the judgment is entered. One-half ($12.50) is sent to the State. One-tenth ($2.50) is retained locally for judicial efficiency. Four-tenths ($10) are retained locally with no restrictions. (Section 133.103, Local Government Code)
- **Traffic Law Failure to Appear (FTA):** $30 for failure to appear or failure to pay or satisfy a judgment for violation of any fine-only offense **if city has contracted with the Department of Public Safety** to deny renewal of driver's licenses. Two-thirds ($20) are sent to the State. One-third ($10) is retained locally. Applies on any violation that municipal court has jurisdiction of under Art. 4.14, C.C.P. (Chapter 706, T.C.)

Seat Belt & Child Safety Systems: City must remit to the State 50 percent of the fines collected for violations of the seat belt and child safety systems (Secs. 545.412 & 545.413(b), T.C.). Remittiture must be done at the end of the city's fiscal year. (City must remit 50 percent of the $100 to $200 fines. Change applies only to a city fiscal year ending on or after September 1, 2003.)

Excess Fines: Cities with population less than 5,000 must remit all but one dollar of fines and special expenses under Article 45.051, C.C.P. for Title 7, T.C. offenses when the fines and special expenses for such offenses reach 30 percent of the city's budget less any federal money. (Section 542.402(b), T.C.)

Ten Dollar Fees: A court may assess a $10 fee when a defendant elects to take a driving safety course (DSC) on or before the answer date on his or her citation (Art. 45.0511(f)(1), C.C.P.). The court may require the defendant to pay $10 for the court to request the defendant's certified Texas DL record from DPS for DSC (money sent to state). **Effective January 1, 2006.** When a court grants teen court, the court may collect two $10 fees – one is kept by the city for administering teen court, the other is disbursed to the teen court program (Art. 45.052(e) & (g), C.C.P.). A $10 fee may be collected upon dismissing a case: 1) Expired driver's license or expired registration when a defendant remedies it within 10 working days. (Secs. 521.026 & 502.407, T.C.); 2) An inspection certificate expired less than 60 days when defendant remedies it within 10 working days (Sec. 548.605, T.C.).

Name of Cost/Fee	Legal Reference	Abbreviation
Consolidated Fee	Local Government Code, Section 133.102	CF
Traffic Fund	Transportation Code, Section 542.403	TFC
Child Safety Fund	Code of Criminal Procedure, Article 102.014	CS
State Juror Reimbursement Fee	Code of Criminal Procedure, Article 102.0045	SJRF
State Traffic Fee	Transportation Code, Section 542.4031	STF
Judicial Support Fee	Local Government Code, Section 133.105	JSF

COLLECTIONS CORNER

New Collection Law: Problem or Opportunity?

By Jim Lehman, Collections Specialist, Office of Court Administration

Abraham Lincoln once said, "Law without enforcement is only good advice." During the most recent Regular Session, the Texas Legislature pursued enforcement by passing a measure that will make it more difficult for defendants to get away with not paying court costs, fees, and fines in criminal cases. This is the story of how court collections became a legislative priority.

In the early 1990s, officials in Dallas County took a hard look at the collections process in their county criminal courts and concluded that something was wrong. A significant source of county revenue was being neglected or ignored. But there was an even greater issue. Those uncollected funds actually represented court orders ignored by lawbreakers.

After Dallas County officials determined that the problem was the process itself, they began to look at court collection programs across the nation. From their research and evaluation they determined that each successful program had six key components: a uniform collections policy; a clear line of responsibility for the collection of court costs, fees, and fines; immediate response to default; severe and timely sanctions for default; and realistic enforcement options. In essence, the programs having the greatest success applied a proactive, private sector approach to collections. But before Dallas County could undertake such an approach, they determined that the following four elements had to be established as priorities:

1. ***Total Judicial Commitment***: the key element of successful court collections programs. Everyone follows the judge's lead. A willingness to make some changes, beginning with a different attitude about court collections, is usually required. No assumption is made about the ability of an offender to pay.
2. ***Simplicity***: an essential element of successful court collections programs. The goal is to enhance compliance by reducing confusion.
3. ***Uniform Collections Policy*****:** lays the foundation for a simple, consistent approach to collections. It establishes the parameters for collecting and, most important, puts everyone involved in the process on the same page.
4. ***Quality Professional Staffing:*** the driving force of successful court collections programs. The staff must be qualified and committed to excellence. The court **must** have complete confidence in the decision making ability of the collections staff.

In February 1993, a court collections pilot program employing proactive, private sector techniques was launched in Dallas County with a two-person staff and a budget of $75,000, serving three county criminal courts. The pilot had 12 months to produce an increase of $250,000 in the amount of court costs, fees, and fines collected. The goal was realized 90 days after the program was started. The pilot is now a fully self-supporting department operating under the Dallas County Clerk's office, which serves all 13 county criminal courts. The program is credited with increasing collections an estimated average $4 million per year, providing the county with an additional $48 million in revenue from inception through FY 2004. As a result of the success with misdemeanor cases, Dallas County later implemented similar programs to handle district court cases and juvenile cases, respectively.

The Office of Court Administration (OCA) became involved in the search for a solution to this issue in the mid-1990s. In September 1996, OCA implemented a court collections pilot project, modeled largely after the Dallas County program, in the county-level courts in Brazoria County. Unlike Dallas County, Brazoria County had a successful history of collecting court costs, fees, and fines. However, at the end of the first year of operation of the collections program, Brazoria County experienced a 131% increase in the dollar amounts collected within 60 days of sentencing, and their collection rate increased by approximately 10 percentage points. They also experienced a 58% decrease in credits given for jail time served. By the end of calendar year 1997, Brazoria County's collections rate, which in 1995 was an impressive 75%, was approaching 90%.

After the success of the Brazoria County pilot project, OCA began to assist cities and counties interested in improving compliance and revenue collections with the implementation of its model program. As of September 1, 2005, OCA has assisted with the

development and implementation of collection programs in 50 counties and 17 cities. In most of the counties, however, the program does not serve all levels of court within the county (*i.e.*, district, county, and justice courts). In FY 2004, those programs reporting both a pre-program and a post-program collection rate averaged a 91% increase in their collection rate (from an average pre-program collection rate of 33% to an average post-program collection rate of 63%), bringing in an additional, approximately $39 million in revenue.

Those figures came to the attention of the Senate Finance Committee in 2005, leading to the filing of S.B. 978. Ultimately, the concept was incorporated into Article 10 of Senate Bill 1863, which requires cities with a population of 100,000 or more and counties with a population of 50,000 or more to implement a program to improve the collection of court costs, fees, and fines in criminal cases. All the courts in those jurisdictions that handle criminal cases are required to participate.

Approximately half of the affected cities and counties must implement programs by April 1, 2006, and the remaining number must be implemented by April 1, 2007. (See implementation list at www.courts.state.tx.us/oca/collections/PriorityLists.xls)

To comply, the city or county must implement a program that has two components. The first component is designed to improve in-house collections and the second component is designed to improve the collection of balances more than 60 days past due. The in-house component must conform to the model developed by OCA. A city or county can comply with collecting balances of more than 60 days past due by entering into a contract with a private attorney or public or private vendor.

The bill requires the Comptroller of Public Accounts to determine pre-mandatory program collection rates for the cities and counties and to conduct periodic audits. Cities and counties found not to be in compliance will be penalized financially – they will not be able to retain a portion of certain fees they collect for the state until they are back in compliance.

In response to the new legislation OCA has developed a plan for the implementation of S.B. 1863. The plan includes dividing the state into implementation regions and staffing each region with a Regional Collections Specialist who will work with each affected city and county on compliance issues. A special regional meeting has been held in each region to introduce those in the area to their new Regional Collections Specialist and to begin working on implementation schedules. OCA has also been working with the Comptroller's office to coordinate implementation and compliance efforts.

Collection improvement programs have two major benefits. First, they encourage personal responsibility. According to the National Center for State Courts, "Lack of compliance in paying fines and fees denies a jurisdiction revenue and, more important, calls into question the authority and efficacy of the court and the justice system." Second, improving collections benefits both the local jurisdiction and the State of Texas. A portion of what is collected is remitted to the state to fund numerous worthwhile programs (*e.g.*, compensation to victims of crime, criminal justice planning, and indigent defense). Most of the funds collected are retained locally and used to fund local programs (*e.g.*, courthouse security, court technology, and records management) and to increase local general revenue.

OCA's model collections program is a logical approach to the court compliance issue. In recent years, the program has been embraced by more and more cities and counties. This concept was not embraced voluntarily because it was easy. It was embraced because it works.

Additional information is available at the OCA website: www.courts.state.tx.us/oca/collections/collections.asp. New details will be posted there as they become available.

Available on the OCA Website

- Frequently Asked Questions
- OCA Contact Information
- S.B. 1863
- OCA Model Program Components
- Government Collection Association of Texas
- Collections Process Checklist
- Prioritized Implementation Schedule
- Implementation Regions (pdf)
- Collections Software Vendor Information
- Costs & Fees in Criminal Cases
- Texas Cities > 100,000 Population
- Texas Cities > 50,000 Population
- Collections Home Page

FROM THE CENTER

Codebooks

All judges who last summer requested a complimentary copy of the *Texas Criminal and Traffic Law Manual* should receive the book directly from the publisher in December 2005. The book cover is black and white and contains the TMCEC seal. This complimentary copy was provided by TMCEC with grant funds from the Texas Court of Criminal Appeals.

After Gould Publishing was acquired by Lexis-Nexis in 2005, Gould's title *Texas Criminal Law and Motor Vehicle Handbook* was discontinued and replaced with a pre-existing Lexis-Nexis title: *Texas Criminal and Traffic Law Manual*.

The *Texas Criminal and Traffic Law Manual* does not contain many of the statutory excerpts contained in the now retired *Texas Criminal Law and Motor Vehicle Handbook*. To remedy this problem, TMCEC worked with Lexis-Nexis/Gould to create a supplement entitled *Texas Criminal and Traffic Law Manual: Judicial Supplement*. The supplement contains excerpts from the following statutes: Constitution of the State of Texas, Agriculture Code, Alcoholic Beverage Code, Business and Commerce Code, Business Organization Code, Civil Practice and Remedies Code, Education Code, Election Code, Family Code, Government Code, Health and Safety Code, Human Resources Code, Insurance Code, Local Government Code, Occupations Code, Parks and Wildlife Code, Property Code, Tax Code, Utilities Code, Texas Rules of Appellate Procedure, Texas Rules of Civil Procedure, and Texas State Rules.

To better serve the needs of municipal judges and other members of the Texas judiciary, TMCEC collaborated with Lexis-Nexis to develop an all inclusive publication. The book is entitled *Texas Criminal and Traffic Law Manual: Judicial Edition*. Users wanting a single text may want to consider purchasing it. It will go on sale in January 2006. For the *Judicial Edition*, Lexis-Nexis is offering readers a discount on their purchase of the new *Judicial Edition* through their online bookstore at www.lexisnexis.com/bookstore. Buyers will receive 10% off by entering discount code **LNBCLP** at the checkout.

If you purchased the *Texas Criminal and Traffic Law Manual: 2005-2006 Edition* (shipped during September and November 2005) and would like a free copy of the *Judicial Supplement*, be sure to request a copy from Lexis-Nexis/Gould Publishing. Contact: Customer Service Department at 800/833-9844.

Juvenile Law Conference

The Juvenile Law Section of the State Bar of Texas is sponsoring *the 19th Annual Juvenile Law Conference – Dr. Robert O. Dawson Juvenile Law Institute* on February 22-24, 2006 at the Westin Park Central Hotel in Dallas. The program is approved to meet the mandatory judicial education requirements for municipal judges. It offers 13.25 MCLE hours of credit. For more information, go online to www.juvenilelaw.org/CLE/200602.pdf.

Municipal Courts Week

Thanks to the support of Texas Representative Burt Solomons, October 31 -November 4, 2005 was officially declared as *Municipal Courts Week* by the 79th Legislature. TMCEC is very appreciative of Representative Solomons who sponsored the House resolution. Municipal courts are asked to send TMCEC copies of any press releases, newspaper articles, planning documents, photographs, *etc.* that were developed locally to celebrate the important contributions of Texas municipal courts in local communities. These materials will be put on the TMCEC website [www.tmcec.com] for use by courts and to encourage others to participate. Please send your materials to TMCEC, 1609 Shoal Creek Blvd., Suite 302, Austin, Texas 78701 or email them to tmcec@tmcec.com.

So far, we have received information from the courts listed below on their activities to Municipal Court Week. We greatly appreciate their participation.

Alvin
Balch Springs
Bastrop
Beeville
Cockrell Hill
Coppell
Corsicana
Dallas
Galveston
Hallettsville
Harlingen
Italy
Jacksboro
Katy
Kennedale
Missouri City
Montgomery
Princeton
Roanoke
San Antonio
Sealy
Sweeny
Tenaha
Webster

Prosecutor Seminar

TMCEC will offer the first of two 12-hour prosecutor programs on February 8-9, 2006 at the Harvey Hotel DFW. The TMCEC Annual Municipal Prosecutors Conference is the only program in the state designed to specifically assist such attorneys in obtaining and maintaining professional competence. Presentations will focus on ethics, as well as procedural, substantive, and case law. The Center asks that participants attend the entire conference. As this program is underwritten by public moneys, it is required that participants attend all sessions to ensure the best use of public resources. Please do not enroll in the program if you do not intend to stay the entire time. Municipal prosecutors may register for either 12-hour prosecutor's conference for $250. Housing, two breakfasts, one lunch, and course materials are included with the fee. Municipal prosecutors who do not need housing at the conference hotel may pay a $100 registration fee. Prosecutors who must cancel for personal or professional reasons will be charged a $100 cancellation fee if notice of cancellation is not received five (5) working days prior to the conference. A registration fee of $300 (or $150 if no housing is needed) will be charged for non-municipal prosecutors or attorneys. A registration form may be found in the TMCEC Academic Schedule or on page 30 of this newsletter. A flyer will be mailed to all courts in early January. The program will be repeated May 25-26, 2006 in Corpus Christi.

Bailiff/Warrant Officer Seminar

TMCEC is offering for TCLEOSE credit a specially designed bailiffs and warrant officers program in Irving on February 8-9, 2006 at the Harvey Hotel DFW. The program is funded by a grant from the Court of Criminal Appeals, and there is no registration fee. Housing, course materials, two breakfasts, and a lunch will be provided. Please register by January 9, 2006. A registration form may be found in the TMCEC Academic Schedule or on page 30 of this newsletter. The program will offer 12 hours of TCLEOSE credit with additional four TCLEOSE hours credit for the pre-conference. A flyer will be mailed to all courts in early January. The program will be repeated June 27-28, 2006 in College Station.

Level III Assessment Clinic

TMCEC will offer its **only** Level III assessment clinic on March 24-26, 2006 in New Braunfels. The housing deadline is February 20, 2006. The course focuses on developing the court administrator as a manager and is a requirement to achieve Level III certification in the Municipal Courts Certification Program. A $100 registration fee is required. A registration form may be found in the TMCEC Academic Schedule or on page 30 of this newsletter. A flyer will be mailed to all courts in early February. Please note that the June 5-7, 2006 Assessment Clinic has been cancelled due to a reduction in funding from the Texas Court of Criminal Appeals. The February clinic will be the ONLY opportunity in FY06 for clerks and court administrators to obtain this training.

Courts and Local Government Technology Conference January 31 - February 2, 2006

Tuesday, January 31, 2006: Pre-Conference Workshop for Municipal Courts
Held at the Radisson Hotel Austin

8:00 - 9:00 a.m.	*Registration*
9:00 - 10:00 a.m.	Using Technology to Help with Collections - Mr. Russ Duncan, Assistant Collections Specialist, Office of Court Administration
10:15 - 11:15 a.m.	*Computer Technology & Judicial Ethics* - Ms. Seana Willing, Executive Director, Committee on Judicial Conduct
11:15 - 12:45 p.m.	*Lunch on your own & Open House at TMCEC*
12:45 - 1:45 p.m.	*Flowcharting & Mapping: Getting Your Court Organized & Ready to Go Paperless* - Ms. Margaret Robbins, TMCEC Program Director & Ms. Suzie Garcia, Court Administrator, San Marcus
1:45 - 2:45 p.m.	*Ins and Outs of Technology Contracts* - Mr. Ray Rike, Deputy Chief, Civil Division, Tarrant County Criminal District Attorney's Office
3:00 - 4:00 p.m.	*Legislative Questions & Answers* - Mr. Ryan K. Turner, TMCEC General Counsel
4:00 - 5:00 p.m.	*Internet Sites, Blogs & PODs for Municipal Court Research* - Mr. Rey Guzman, TMCEC Multimedia Specialist & Ms. Hope Lochridge, TMCEC Executive Director

IMPORTANT ANNOUNCEMENT

Registration Fees for TMCEC Programs Next Year (FY07)

At the September 16-17, 2005 meeting of the TMCA/TMCEC Board of Directors, the Board adopted a policy of a $50 registration fee for all participants in TMCEC FY07 programs that are not offered at the TMCEC office in Austin. The registration fee will apply to judges, clerks, court administrators, bailiffs, and warrant officers attending TMCEC 12-hour, 16-hour, and 32-hour programs in FY07 (September 1, 2006-August 31, 2007). Please budget accordingly for next year.

Why are registration fees suddenly needed?

- The Texas Legislature (79th Session) approved increasing travel allowances from $80 to $85 a night for lodging, from $30 to $36 a day for meals, and from 35 cents to 40.5 cents for mileage. No additional grant funds were allocated for judicial education – grantees were just expected to absorb the increase.
- TMCEC employees received a four percent cost of living pay raise. This was the first cost of living raise in four years.
- With the increase cost of fuel, it is anticipated that all TMCEC training expenses will increase, including airfare for faculty and staff, freight costs, and paper/course materials costs.

Given this financial situation, the TMCEC Board adopted the registration fees rather than cut TMCEC staff or programs. Of the six grantees funded from the Judicial and Court Support Training Fund (Fund 540), TMCEC is the ONLY program that does NOT currently charge registration fees.

The Courthouse Security Fund can be used to pay for continuing education on security issues for court personnel and security personnel and may be used to offset the $50 registration fee. TMCEC plans to include court security in its clerk, court administrator, and bailiff/warrant officer programs next year so that courts may use the Courthouse Security Fund to help budget for TMCEC training. Judges may consider using local funds generated under the time payment fee that allows funding for the purpose of improving the efficiency of the administration of justice in the municipality.

The Board and staff members of TMCEC recognize that municipal courts submit more funds from the collection of court costs than any other level of the judiciary, and we regret that these fees are necessary.

Please remind your cities to budget next year for training for all judges and court support personnel. Although training is not mandatory for court clerks and court administrators, we feel that it is essential and improves the administration of justice in your city. We hope that you will continue to send court support personnel to TMCEC programs.

Note to Attorneys: Beginning in FY07, there will be a $100 fee for MCLE credit. This will only apply to the attorney judges who wish to submit their attendance at a TMCEC program for MCLE credit. If attorney judges take the judicial exemption instead or do not need or want the MCLE credit, they will not pay the $100 fee.

Going Paperless: Problems & Solutions

2006 Courts & Local Government Technology Conference

January 31 - February 2, 2006 • Austin Convention Center • Austin, Texas

In conjunction with the Government Technology Conference • Educational Co-Sponsor: LBJ School of Public Affairs

Texas municipal courts are going paperless. Processes that were futuristic or isolated a few years ago are becoming necessities. It's a big job with lots of decision points and city officials, employees, and IT specialists need new ways of thinking and new skill sets to address the challenge. The 2006 Courts and Local Government Technology Conference will focus on these key aspects of electronic government with special emphasis on paperless applications. The conference, scheduled for January 31 through February 2, 2006 in conjunction with the Government Technology Conference, will additionally give attendees the opportunity to attend major GTC events and exhibitions.

Special Features

- Best Practices (paperless courts, remote magistration, electronic records)
- Blogs as a Resource
- Electronic Ticket Writers
- Specialized Educational Tracks

Schedule of Events

Tuesday, Jan. 31, 2006

9 am - 5 pm Pre-conference Workshops (See page 27 in this newsletter for agenda)

Wednesday & Thursday, Feb. 1-2, 2006

8 am - 5 pm General Sessions & Concurrent Workshops

Continuing Education

Participation in this conference counts towards credit for municipal court clerk certification, but **not** for mandatory judicial education for municipal judges.

Registration

The registration fee for the entire conference, including pre-conference training, is $125 BEFORE January 1, 2006 and $150 AFTER January 1st. Registrations are transferable. Requests for refunds must be received in writing by January 15. After that date, requests will be subject to an administrative fee equal to one-half of the registration fee. For more information, contact TMCEC at 800/252-3718.

Hotel

The conference is at the Austin Convention Center, 500 East Cesar Chavez in Austin. Hotel accommodations are at the Radisson Hotel, 111 East Cesar Chavez, 512/478-9611. Please request the "TAC Courts & Local Government Room Block." The room rate of $85 single/$120 double is limited; make your hotel reservation as soon as possible. The guaranteed reservation deadline is January 13th. (Note: There is also a charge for parking per day at the hotel.) **Participants must make their own arrangements and pay for all housing, parking, and meal expenses.**

For more information on the GTC conference, see their website at www.govtech.net. For more information about this Texas Court and Local Government Technology Conference, go to www.county.org.

Co-sponsors

Judicial co-sponsors for this program are: Texas Association of Counties, Texas Municipal Courts Education Center, Texas Center for the Judiciary, Texas Justice Court Training Center, Judicial Committee on Information Technology, and Texas Judicial Academy. The coordinating organization is the Texas Association of Counties (TAC). TMCEC expresses its appreciation to TAC for its leadership and effort on this project.

2006 Courts & Local Government Technology Conference Registration Form

January 31 - February 2, 2006 • Registration Fee: $125 / $150 after January 1

Name: _____

Title: _____ County: _____

Email: _____

Address: _____

City: _____ Zip: _____

Phone: _____ Fax: _____

____ Credit Card ____ Check Enclosed

Please make checks payable to **TMCEC**. Mail or fax to:
Texas Municipal Courts Education Center
1609 Shoal Creek Blvd. #302, Austin, TX 78701
Fax to 512/435-6118

Credit Card Registration: (Please indicate clearly if combining registration forms with a single payment.)

Credit card type:
☐ *MasterCard*
☐ *Visa*

Credit Card Number ***Expiration Date*** ***Verification Number*** *(found on back of card)*

_____

Name as it appears on card (print clearly): _____

Authorized Signature _____

2005-2006 TMCEC Academic Schedule At-A-Glance

Conference:	Dates(s):	City:	Hotel Information:
12-Hr Regional Judges/Clerks Conferences	January 18-19, 2006	San Antonio	Crowne Plaza Riverwalk
Local Government Technology Conference	January 31-February 2, 2006	Austin	Convention Center & Radisson Hotel
12-Hr Prosecutors Conference	February 8-9, 2006	Irving	Harvey Hotel DFW
12-Hr Bailiffs/Warrant Officers Conference	February 8-9, 2006	Irving	Harvey Hotel DFW
12-Hr Regional Judges/Clerks Conferences	February 20-21, 2006	Plano	Marriott Legacy
12-Hr Regional Judges/Clerks Conferences	February 28-March 1, 2006	Galveston	San Luis Resort/Spa
Level III Assessment Clinic	March 24-26, 2006	New Braunfels	TbarM Ranch
12-Hr Regional Judges/Clerks Conferences	April 20-21, 2006	Lubbock	Holiday Inn Park Plaza
12-Hr Regional Attorney Judges Conference	May 1-2, 2006	S. Padre Island	Radisson Resort
12-Hr Regional Non-Attorney Judges Conference	May 3-4, 2006	S. Padre Island	Radisson Resort
12-Hr Regional Clerks Conference	May 8-9, 2006	S. Padre Island	Radisson Resort
12-Hr Low Volume Seminar	May 25-26, 2006	Corpus Christi	Omni Bayfront
12-Hr Prosecutors Conference	May 25-26, 2006	Corpus Christi	Omni Bayfront
Level III Assessment Clinic **CANCELED**	June 5-7, 2006	Austin	Vintage Villas
12-Hr Court Administrators Conference	June 13-14, 2006	Austin (Lakeway)	Lakeway Inn
12-Hr Low Volume Seminar	June 27-28, 2006	College Station	Hilton Conference Center
12-Hr Bailiffs/Warrant Officers Conference	June 27-28, 2006	College Station	Hilton Conference Center
12-Hr Regional Judges/Clerks Conferences	July 12-13, 2006	El Paso	Camino Real
32-Hr New Judges/Clerks Conferences	July 24-28, 2006	Horseshoe Bay	Marriott Resort

Reminder: Alternative Judicial Education

Experienced municipal judges who have completed two years of TMCEC courses may opt to fulfill the 12-hour mandatory judicial education requirements for 2005-2006 by attending a course offered by an approved continuing legal education provider. The accredited providers are the American Academy of Judicial Education, the ABA Traffic Seminar, the Harvard Law School, the Houston Law School and Foundation, the Juvenile Law Section of the State Bar of Texas, The National Judicial College, National College of District Attorneys, South Texas School of Law, the State Bar of Texas Professional Development Programs, the Texas Defense Lawyers Project, the Texas Justice Courts Training Center, the Texas Juvenile Probation Commission, and the Texas Municipal Courts Association. Please check with TMCEC for the most up-to-date list of approved providers. The course must relate to the jurisdiction of the municipal courts and be at least 12 hours in length. Video, audio, and online programs are ineligible. After an initial two-year period, udges may "opt-out" only every other year. Judges are asked to complete an intent to opt out form prior to April 30, 2006. If you have questions, please contact Hope Lochridge at the Center (800/252-3718).

TEXAS MUNICIPAL COURTS EDUCATION CENTER 2006 REGISTRATION FORM

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

Type of Program: ☐ Judge ☐ Clerk ☐ Court Administrator ☐ Prosecutor ☐ Bailiff/Warrant Officer*
☐ Assessment Clinic ($100 program fee) [$250/$100 fee]

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

Name *(please print legibly)*: Last Name: _____ First Name : _____ MI: _____

Names also known by: _____ Female/Male: _____

Position held: _____

Date appointed/Hired/Elected: _____ Years experience: _____

Emergency contact: _____

HOUSING INFORMATION

TMCEC **will make all hotel reservations** from the information you provide on this form. **TMCEC will pay for a single occupancy room at all seminars**: four nights at the 32-hour seminars, three nights at the 24-hour seminars/assessment clinics and two nights at the 12-hour seminars. To share with another seminar participant, you must indicate that person's name on this form.

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

How will you be traveling to seminar? ☐ Driving ☐ Flying
Arrival date: _____ ☐ Smoker ☐ Non-Smoker

Municipal Court of: _____ Email Address: _____

Court Mailing Address: _____ City: _____ Zip: _____

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

Primary City Served: _____ Other Cities Served: _____

STATUS (*Check all that apply):*

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

***Bailiffs/Warrant Officers:** Municipal judge's signature required to attend Bailiff/Warrant Officer programs.*

Judge's Signature: _____ Date: _____

Municipal Court of: _____

I certify that I am currently serving as a municipal court judge, city prosecutor or court support personnel in the State of Texas. I agree that I will be responsible for any costs incurred if I do not cancel five (5) working days prior to the seminar. I will cancel by calling the Center. If I must cancel on the day before the seminar due to an emergency, I will call the TMCEC registration desk at the seminar site. If I am a "no show," TMCEC reserves the right to invoice me or my city for meal expenses, course materials and possibly housing ($80 plus tax per night). If I have requested a room, I certify that I live at least 30 miles or 30 minutes driving time from the seminar site. ***Payment is required ONLY for the Prosecutor Programs, Assessment Clinics and the Legislative Updates; payment is due with registration form. Participants in the Assessment Clinics must cancel in writing two weeks prior to the seminar to receive refund.***

_____

Participant Signature *Date*

PAYMENT INFORMATION:

☐ Check Enclosed *(Make checks payable to TMCEC.)*
☐ Credit Card *(Complete the following; $2.00 will be added for each registration made with credit card payment.)*

Credit Card Registration: (Please indicate clearly if combining registration forms with a single payment.)

	Credit Card Number	***Expiration Date***	***Verification Number*** *(found on back of card)*
Credit card type:			
☐ *MasterCard*			
☐ *Visa*			

Name as it appears on card (print clearly): _____

Authorized Signature _____

Please return completed form with payment to TMCEC at 1609 Shoal Creek Boulevard, Suite 302, Austin, TX 78701.
Fax registration forms with credit card information to 512/435-6118.

ATTENTION

Fee for Support of Court-Related Purposes (effective 12/1/05)
Section 133.105, Local Government Code

A new law went into effect that will not be appearing in any of the codebooks - Article 133.105, Local Government Code: 133.105. Fee for Support of Court-Related Purposes:

(a) A person convicted of any offense, other than an offense relating to a pedestrian or the parking of a motor vehicle, shall pay as a court cost, in addition to all other costs, a fee of $4 to be used for court-related purposes for the support of the judiciary.

(b) The treasurer shall deposit 60 cents of each fee collected under this section in the general fund of the municipality or county to promote the efficient operation of the municipal or county courts and the investigation, prosecution, and enforcement of offenses that are within the jurisdiction of the courts.

(c) The treasurer shall remit the remainder of the fees collected under this section to the comptroller in the manner provided by Subchapter B. The comptroller shall deposit the fees in the judicial fund.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 3, Sect. 12, Eff. Dec. 1, 2005.

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