

Authorities and Duties



Presented by
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“Jurisdiction”

The authority conferred upon a court or judge to hear and decide cases and to pronounce sentence.

“Legal Authority”

The right and power of judges to require obedience to their orders lawfully issued in the scope of their duties.

Types of Duties

- Law Enforcement
- Prosecutorial
- Magistrate
- Judicial
- Ministerial and Administrative



Types of Duties

Law Enforcement

A peace officer shall preserve the peace within the officer's jurisdiction by "all lawful means". The Officer shall:

- where authorized, interfere and arrest offenders without warrant to prevent / suppress crime;
- execute all lawful process issued by magistrate or court;
- with probable cause, give notice to magistrate of offenses committed within jurisdiction;
- take possession of missing children or persons.

Types of Duties

Prosecutorial

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



Types of Duties

Magistrate



It is the duty of every Magistrate to:

- preserve the peace within his jurisdiction by all lawful means
- issue all process intended to aid in preventing and suppressing crime
- cause arrest of offenders by lawful so that they may be brought to punishment

Types of Duties

Judicial

It is the duty of every Judge to:

- exercise judgment
- resolve questions of law or fact
- choose between alternatives



Types of Duties

Ministerial and Administrative

A duty done under the authority of another and which involves obedience to instructions, but demands no exercise of discretion.

Examples:

- Administering Oaths
- Scheduling of Dockets
- Preparing Reports
- Collecting / Depositing Fines



Types of Duties

- Law Enforcement
 - Prosecutorial
 - Magistrate
 - Judicial
- VS.
- Ministerial and Administrative

Primary Difference?
Discretion!

Vesting Jurisdiction

What are the three main ways that cases are filed in municipal courts?

- Citation by authorized peace officer
- Complaint by citizen
- Complaint by other *authorized source
(Animal control, code enforcement, park ranger, parking attendant)

Vesting Jurisdiction

Who can issue a citation?

- Judge?
- Clerk?
- Prosecutor?
- Peace Officer?



Vesting Jurisdiction

Who can set and take bail?

- Magistrate (Art. 17.02 C.C.P.)
- Judge (Art. 17.02 C.C.P.)
- Peace Officer (limited to Art. 17.20 C.C.P.);
- County Jailer (Art. 17.25 C.C.P.)



Vesting Jurisdiction

Who can file a sworn complaint?

- Judge?
- Clerk?
- Prosecutor?
- Peace Officer?
- Public?

...basically anyone!

Vesting Jurisdiction

Who should prepare the complaint?

- Prosecutor

Who usually/often prepares it?

- Clerk

Who cares?

Vesting Jurisdiction

Who can administer the oath to an affiant?

- Judge
- Clerk/deputy clerk
- City attorney/deputy city attorney
- City secretary

Who ~~can~~^{must} accept the citation/complaint?

- Judge
- Clerk

Vesting Jurisdiction

Who can request a summons?

- Prosecutor only

Who should prepare the summons?

- Clerk

Who can issue the summons?

- Magistrate or Judge

Who can execute the summons?

- Peace Officer

Filing the Case

Docketing & Scheduling

Administrative Duty

- Set cases for initial appearance
- Set cases for show cause/other hearings
- Schedule trials
- Reschedule cases (Continuances)?

Only a judge has authority to grant a continuance!

Subpoenas

Who can request witness subpoenas?

- Prosecutor
- Defendant

Who can issue witness subpoenas?

- Judge
- Clerk

Who can serve witness subpoenas?

- Peace Officer
- Unrelated party at least 18yrs old

Pleas

Who can accept a plea from a defendant?

- Clerk?
- Prosecutor?
- Peace Officer?
- Magistrate?
- Judge?

Pleas

- Only judge* can formally accept plea!
* Magistrates can accept pleas from out-of-county defendants
- Only judge can enter plea of not guilty when defendant refuses to enter plea
- Only prosecutor and defendant can engage in plea bargaining ("masking")
- Only judge can accept plea bargain presented by prosecutor

Guilty or No Contest

Judge determines fine (within penalty range)

- Suggested minimum (window) fine for defendants who do not contest the case

Judge determines how/when defendant pays fine

- Immediately
- Installment payment plan
- At some later date



Guilty or No Contest

Judge determines:

- Community service (only if indigent or child):
 - New Rules for children ("Election of payment method")
 - Tutoring, if juvenile defendant committed offense at school
- Credit for Time Served
- Waiver of fine and costs (only if indigent)

* Clerks cannot grant time payment plan, time served, or community service/tutoring, or waive fines/costs!!!

Alternative Sentencing

Driving Safety Course

- Defendant "makes" requests (in person, thru Atty, by mail)
- Clerk "processes" request
- Judge "grants" request, if Defendant qualifies
- Judge "shall dismiss" case if Defendant presents proof of completion
- If Defendant fails to comply, Clerk sets case for show cause hearing (mandatory)

Alternative Sentencing

Deferred Disposition (Probation)

- Prosecutor may "recommend"
- Judge has "discretion" to grant / deny
- Clerk "processes" paperwork and monitors case
- Judge "shall dismiss" if Defendant complies with conditions
- If Defendant fails to comply, clerk sets case for show cause hearing (mandatory)

DISMISSALS

Who has the authority to dismiss a case?

- Clerk?
- Peace Officer?
- Prosecutor?
- Judge?

Dismissals

- Clerk has no authority to dismiss case
- Peace officer has no authority to dismiss case
- Prosecutor/Defendant can "move to dismiss" case
- Only Judge can grant motion to dismiss

Dismissals

Judge's authority to dismiss is limited

In some instances, dismissal is required:

- Compliance with deferred options
- Some compliance dismissals
- No jurisdiction
- Defective Complaint (if motion is before the court)
- Violation of Right to Speedy Trial

Dismissals

Judge's authority to dismiss is limited (Cont'd.)

- In other instances, dismissal is discretionary:
 - Some compliance dismissals
 - Pending motions
- In most instances, motion from prosecutor is required

APPEALS

Appeals

- Rules differ for Record/Non-Record Courts
- Judge sets the Appeal Bond
- Judge / Clerk prepares the file for Appellate Court
- Court should send up all appeals

Appeals



Caution! Judge is NOT the gatekeeper!

Judge should not appear to be limiting Defendant's right to appeal

GENERAL CLERK DUTIES

Administrative & Ministerial

- Records Management
- Deposit Fines / Fees in City Treasury
- Monthly reports to City Council
- Maintain Financial Records
- Prepare / File:
 - Regular DPS reports
 - Monthly OCA reports
 - Quarterly Comptroller reports



Judicial Duties Cannot Be Delegated



Only The Judge Can:

- Set Bail
- Determine Sufficiency of and Forfeit Bail
- Issue Process (Warrants, Capias, Capias Pro Fine, Summons)
- Accept Pleas
- Conduct Hearings
- Rule on Motions
- Grant Deferred Orders (Deferred Disposition, DSC, Teen Court)
- Sign Judgments
- Set Fines/Punishment and Determine Payment
- Determine Indigency
- Set Appeal Bonds

What could happen if they are delegated...

- Arrests may be illegal
- Evidence may be suppressed
- Judge, Clerk or City may not be immune from liability
- Death and/or Dismemberment?

When do the above rules not necessarily apply?

- When judge is unavailable?
- When clerk has judges signature stamp?
- When clerk is ordered by a city official?
- When judge has standing orders?

Standing Orders

- What are Standing Orders?
- What issues can be addressed by a Standing Order?

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INTRODUCTION

The single most important source of municipal court authority and jurisdiction is the Texas Constitution, which gives the Legislature the power to establish courts and set their jurisdiction where it sees fit. The Legislature exercised this power and created municipal courts in the Corporation Court Law of 1899, which has since been codified in the Government Code. The authority and jurisdiction of municipal courts can be found in various statutes and codes. In some instances, duties are prescribed by state law; in others, by city charter or city ordinance. However, most daily work assignments developed to discharge official duties are based on policies or procedures authorized by the judge and administered by the court clerk(s) and other officers of the court.

A “duty” is defined by *Black’s Law Dictionary* as any action, performance, task, or observance owed by a person in an official capacity. In the criminal justice system, there are several different categories of duties that may be performed by officers of the court; the key is in knowing who can legitimately perform these different duties. “Authority” is defined as governmental power or jurisdiction. Municipal judges are public officials who are authorized to perform judicial, magistrate, and ministerial duties. Judicial duties may not be delegated unless expressly authorized by law. If a judicial duty is delegated to a clerk, both the judge and the clerk may be subject to liability. Judges may, however, delegate ministerial duties that require no discretion and are generally administrative in nature.

The court clerk carries out the ministerial duties delegated by a judge and performs the administrative and managerial functions for the court. Because statutes do not provide much direction for court clerks, clerks can look at a judge’s judicial authority to get a clearer picture of the relationship between the authority of a judge and that of a clerk.

This guide introduces municipal court personnel to the different players who are considered officers of the court (the prosecutor, defense attorney, bailiff, warrant officer, clerk, and judge), the different types of duties (law enforcement, magistrate, prosecutorial, ministerial, and judicial), and who has the authority to engage in those types of duties.

PART 1 PLAYERS AND DUTIES

This part will briefly describe the qualifications, selection, and duties of officers of the court.

A. Basic Municipal Court Organization

Although some of the fundamental elements of municipal courts in Texas are authorized or required by law, municipalities have wide latitude in prescribing the organizational structure of the court. In Texas, cities are created under statutes that make them either home-rule or general-law cities. Home-rule cities are empowered to enact charter and ordinance provisions not inconsistent with state law; these provisions prescribe structural details of local court organization. A city must have a population of at least 5,000 in order to become a home-rule city. Texas statutes also provide general-law cities—those with a population of less than 5,000 or more than 5,000 without a charter—with some choices regarding the organization of the court. Thus, variations exist throughout the State with regard to court organization. The basic

organization of the municipal court personnel, however, consists of the following officers of the court: judge(s), court clerk(s), prosecutor(s), bailiff(s), warrant officer(s), and defense counsel.

B. The Judge

The judge is responsible for presiding over trials and other court proceedings, for performing certain magistrate functions, and for the general administration of the court. Municipal judges are public officials.

1. Qualifications and Selection

Separate statutory authorization for the selection of municipal judges exists for home-rule cities and for general-law cities. A home-rule city can designate in its city charter whether the municipal judge is elected or appointed. Sec. 29.004(a), G.C. The judge and any alternate judges of a municipal court in a home-rule city are selected under the city's charter provisions. The judge shall be known as the "judge of the municipal court" unless the municipality by charter provides for another title. Sec. 29.004(a), G.C.

In a general-law city, the mayor is the ex-officio judge of the municipal court unless the city passes an ordinance providing for the election or appointment of a judge. If the municipality authorizes an election, the judge must be elected in the same manner and for the same term as the mayor. If the municipality authorizes an appointment, the mayor ceases to be judge on the enactment of the ordinance. The first elected or appointed judge serves until the expiration of the mayor's term. Sec. 29.004(b), G.C.

If a municipal judge of a general-law city is temporarily unable to act, the governing body may appoint one or more persons meeting the qualifications for the position to sit for the regular municipal judge. The appointee has all powers and duties of the office and is entitled to compensation. Sec. 29.006, G.C.

There are no statutory qualifications for a municipal judge; in fact, about half of all municipal judges are not attorneys. The municipality may establish the qualifications for the judge by charter or ordinance. The only statutory qualifications apply to a municipal court of record, in which case the judge must be a resident of Texas, a U. S. citizen, a licensed attorney in good standing, and have two or more years of experience in the practice of law in this State. Sec. 30.00006, G.C.

Both courts of record and courts of non-record may appoint multiple judges. Secs. 29.007 and 30.00006, G.C. When there is more than one judge in a municipality, one judge is generally designated the presiding judge or the administrative judge. As the chief administrator for the court, the presiding judge is responsible for organizing and scheduling court activities, developing and maintaining policies and procedures, allocating the workload, assigning cases to the various courts, supervising court support personnel, and performing a variety of other administrative functions.

2. Term of Office

A municipal judge's term of office is two years unless the municipality provides for a longer term—up to four years—pursuant to Article XI, Section 11 of the Texas Constitution and Section 29.005 of the Government Code. The term of office for judges in municipal courts of record is

established by the ordinance that created the office, for a definite term of two or four years. Sec. 30.00006, G.C.

A municipal judge who is not reappointed by the 91st day following the expiration of a term of office shall, absent action by the appointing authority, continue to serve for another term of office beginning on the date the previous term of office expired. Sec. 29.005, G.C.

If the office of the municipal judge becomes vacant, the governing body of the city shall by appointment fill a vacancy for the unexpired term of office. Sec. 29.011, G.C. If the office becomes vacant, the city secretary, or person responsible for maintaining the records of the city's governing body, is required to notify the Texas Judicial Council of the vacancy or appointment within 30 days. Sec. 29.013, G.C.

More than one court of appeals has held that a municipal judge is not an employee. Regardless if contracts are utilized to specify compensation, benefits, and expectations, it is important for local governments to distinguish municipal judges from contract employees and at-will employees. As public officers, municipal judges may be removed from office, generally for incompetence, corruption, misconduct, or malfeasance in office. A municipal judge may also be removed from office by the Supreme Court through formal proceedings initiated by the State Commission on Judicial Conduct upon a finding of judicial misconduct. Art. V, Sec. 1-a, Tex. Const.

3. Compensation

Municipal judges are compensated by the municipality, and the municipality sets the compensation amount. Although municipal judges are considered “state judges” for a few statutory privileges (e.g., being able to withhold their home address from ad valorem tax records), they are not considered so for others (e.g., being able to withhold their home address from their driver's license), including laws that set the compensation of county, district, or appellate judges.

4. Oath of Office

Article XVI, Sections 1(a) and 1(c) of the Texas Constitution require all officials who are elected or appointed to take an oath of office. The oath is retained with the official records of the office, usually filed with the city secretary or the person responsible for maintaining the official records of the office. Before an elected or appointed official takes the oath of office, however, the official must swear to an anti-bribery statement, also retained with the records of the office. Art. XVI, Secs. 1(b) and 1(c), Tex. Const. The oath and statement must be sworn to and properly filed every time an official is reelected or reappointed. This includes when a judge continues to serve for another term because the city did not take action to reappoint a judge or appoint another judge by the 91st day following the expiration of a term of office. Before performing any official duties, the judge must swear to and file the anti-bribery statement of officer and oath of office. The wording of the oaths is included in *Appendix A*.

A person administering an oath of office or statement of officer must have the authority to administer an oath. Persons who have the authority to administer any oath are listed in Section 602.002 of the Government Code and include:

- a judge, retired judge, or clerk of a municipal court;
- a judge, retired judge, senior judge, clerk, or commissioner of a court of record;

- a justice of the peace or a clerk of a justice court;
- a notary public;
- the secretary of state or a former secretary of state;
- the lieutenant governor or a former lieutenant governor;
- the speaker of the House of Representatives or a former speaker of the House of Representatives;
- the governor or a former governor;
- a legislator or retired legislator;
- the attorney general or a former attorney general;
- the secretary or clerk of a municipality in a matter pertaining to the official business of the municipality; or
- a peace officer only if the oath is administered when the officer is engaged in the performance of the officer's duties and the administration of the oath relates to the officer's duties

Presumably, a person would not be authorized to administer the oath until they themselves had taken an oath for their office.

5. Duties

Judges have the authority to perform judicial, magistrate, and ministerial duties. Judicial duties require an exercise of judgment, a decision of a question of law or fact, or a choice of alternatives. A question of law is an issue involving the application or interpretation of a law. A question of fact is an issue involving resolution of a factual dispute. The choices made by judges must be lawfully available choices or alternatives.

Judicial duties involve the exercise of discretion. "Judicial discretion" is defined as the exercise of judgment by a judge based on what is fair under the circumstances and guided by the rules and principles of law. A judge's discretion to make decisions must be based on facts and guided by law. It is the power to determine what, under existing circumstances, is right or proper. Judicial discretion is not unrestrained, though, and must be exercised so as to give effect to the purpose of the law for the interest of justice.

In the capacity of a trial court judge, the judge must be impartial and ensure that justice is done. The judge is *not* an adversary and must decide questions only on the basis of law. He or she must never assume the role of prosecutor or of defense counsel nor act as a special advisor to the police or a rubber stamp for law enforcement. The judge must never be influenced by the city to produce revenue or to enforce laws selectively.

When cases proceed to trial, only the evidence presented and the applicable laws are legitimate bases for any judicial decision. Accordingly, the judge must allow the prosecution and the defense, as well as all other components of the system, to perform their duties vigorously, but always within the limits allowed by law.

All judges in Texas are magistrates. Art. 2.09, C.C.P. Magistrate authority is additional power granted by the Texas Legislature. Although magistrate duties are broad and scattered throughout various statutes and codes, the general duty of every magistrate is to preserve the peace within

his or her jurisdiction by issuing process intended to help prevent and suppress crime and to initiate the arrest of offenders in order that they may be brought to punishment. Art. 2.10, C.C.P. Magistrates act as the gatekeeper to the criminal justice system.

Case law provides that a magistrate's authority is countywide. *Gilbert v. State*, 493 S.W.2d 783 (Tex. Crim. App. 1973). In the municipal setting, a mayor is also a magistrate, but a mayor who is not acting as an ex officio municipal judge can only perform magistrate duties and not judicial duties.

The judge will rely heavily on administrative support by the clerk, but may not delegate judicial duties to the clerk or allow the clerk to influence any judicial decisions. While the judge establishes judicial policy and general court procedures, the clerk helps to implement those policies and procedures. Despite the close working relationship between the judge and clerk, there must be a clear separation between judicial and administrative functions.

C. The Court Clerk

Court clerks look to the judge for direction in matters pertaining to overall court policy and judicial procedures. The clerk's primary responsibilities include processing the clerical work of the court; administering daily operations of the court; maintaining court records; coordinating the scheduling of cases; and performing other duties as may be outlined in the city charter or ordinances. In the absence of more detailed, written administrative duties for a clerk by the governing body, the judge may assign various administrative duties. The court clerk is required to "keep minutes of the proceedings of the court, issue process and generally perform the duties for the municipal court that a county clerk performs for the county court." Sec. 29.010(c), G.C.

1. Qualifications and Selection

Court clerks are elected, appointed, or hired, depending on whether the city is a general-law or home-rule city and the court is a court of record or not.

For courts of non-record in a general-law city, the court clerk is elected in the same manner as the municipal judge if the judge is elected. However, some cities provide by ordinance that the city secretary serve as ex officio court clerk. The city secretary who serves in an ex officio capacity may be authorized to appoint a deputy to serve as court clerk. Sec. 29.010(a), G.C. In a home-rule city, the charter provides for the appointment of the court clerk. Sec. 29.010(d), G.C.

For a municipal court of record, the city by ordinance shall provide for the appointment of a clerk of the municipal court(s) of record. The city may provide deputy clerks, warrant officers, and other personnel as needed for the proper operation of the courts, and the clerks and other court personnel perform their duties under the direction and control of the presiding judge.

Cities have broad discretion in what to title the clerk, and titles vary across the State. Generally, there is one clerk of the court (either appointed or elected), and the city can hire additional clerks with titles such as clerk, deputy clerk, or even customer service representative.

The city council may establish the qualifications for the position of the court clerk.

Qualifications vary greatly depending on the size and workload of the court, the nature of the cases processed, the size of the staff and how the workload is distributed, and whether the court's work is done manually or by computer. Knowledge of court functions and procedures, advanced clerical skills, experience in dealing with the public, knowledge of accounting or bookkeeping,

office and personnel management skills, and knowledge of caseflow management are most desirable. Where courts have automated court records, clerks may also be required to possess certain computer skills.

2. Term of Office

The municipal court clerk serves a two-year term of office unless the municipality provides for a longer term pursuant to Article XI, Section 11 of the Texas Constitution. If the city secretary serves as clerk, the term of office is during the term of the city secretary. Sec. 29.010(b), G.C.

If the office of the municipal court clerk becomes vacant, the governing body of the city shall by appointment fill a vacancy for the unexpired term of office. Sec. 29.011, G.C. If the office becomes vacant, the city secretary, or person responsible for maintaining the records of the city's governing body, is required to notify the Texas Judicial Council of the vacancy or appointment within 30 days. Sec. 29.013, G.C.

Appointed or elected court clerks, as opposed to hired clerks, may be removed from office for the same reasons as other city officials. State law governing general-law cities provides that city officials may be removed for incompetence, corruption, misconduct, or malfeasance in office. Removal may occur after providing the officer with due notice and an opportunity to be heard. Sec. 22.077(a), L.G.C. In addition, if the governing body lacks confidence in a municipal officer elected by the governing body, the governing body may remove the officer at any time. The removal is effective only if two-thirds of the elected aldermen vote in favor of a resolution declaring the lack of confidence. Sec. 22.077(b), L.G.C. Of course, the governing body of the municipality should exercise care in removing a judge or clerk from office and should consider the statutory terms of office for both the judge and clerk. Cities should specify grounds and procedures for removal. Statutory municipal courts of record may have statutes that prohibit removal of a municipal judge by the city council. Ch. 30, G.C. Accordingly, specific statutes and ordinances would need to be consulted.

3. Compensation

The salary of the court clerk can be prescribed by the city charter in home-rule cities. Such compensation is paid out of the city treasury. For all other cities—general-law or where the charter does not specify a compensation—the city council sets the court clerk's salary, just as it does for other officers of the court.

4. Oath of Office

Article XVI, Sections 1(a) and 1(c) of the Texas Constitution require all officials who are elected or appointed to take an oath of office. The oath is retained with the official records of the office, usually filed with the city secretary or the person responsible for maintaining the official records of the office. Before an elected or appointed official takes the oath of office, however, the official must swear to an anti-bribery statement, also retained with the records of the office. Art. XVI, Secs. 1(b) and 1(c), Tex. Const. The oath and statement must be sworn to and properly filed every time an official is reelected or reappointed. The oath and statement must be taken before performing any duties of office. The wording of the oaths is included in *Appendix A*.

A person administering an oath of office or statement of officer must have the authority to administer an oath. Section 602.002 of the Government Code lists persons who have authority to administer any oath and includes:

- a judge, retired judge, or clerk of a municipal court;
- a judge, retired judge, senior judge, clerk, or commissioner of a court of record;
- a justice of the peace or a clerk of a justice court;
- a notary public;
- the secretary of state or a former secretary of state;
- the lieutenant governor or a former lieutenant governor;
- the speaker of the House of Representatives or a former speaker of the House of Representatives;
- the governor or a former governor;
- a legislator or retired legislator;
- the attorney general or a former attorney general;
- the secretary or clerk of a municipality in a matter pertaining to the official business of the municipality; or
- a peace officer only if the oath is administered when the officer is engaged in the performance of the officer's duties and the administration of the oath relates to the officer's duties.

Presumably, a person would not be authorized to administer the oath until they themselves had taken an oath for their office.

Section 29.007(f) of the Government Code provides that in home-rule cities that have established the office of municipal court clerk (the clerk is either appointed or elected), the clerk has authority to administer oaths. This statute does not make any exceptions to this authority.

5. Duties

The court clerk can have a tremendous impact on participants' perceptions of the justice system. Each participant has a right to know and understand the court's procedures, thus the clerk should provide participants with information on court procedures while avoiding giving legal advice.

The responsibility of the court clerk's position and the scope of duties have greatly increased in recent years. The professionalism, timeliness, and accuracy of the court clerk's actions are important to the proper operation of the municipal court.

The court clerk must fulfill all duties impartially and competently. Within the role of administratively assisting the court as a whole, the court clerk is responsible for seeing that the court's papers are accurate, orderly, and complete. While the clerk's duty is to serve all participants equally in the legal system, the clerk must remain independent of any particular participant. This means that the clerk must be as courteous and helpful to defense lawyers as prosecutors and to defendants as police officers. The clerk must never attempt to influence the outcome of any case.

D. The Prosecutor

The prosecutor's role is to seek justice. In the broad view, the prosecutor represents the public's interest in enforcing the criminal law strictly but fairly. The prosecutor also has a duty to maintain public respect for the system. The Code of Criminal Procedure provides that it is the primary duty for municipal court prosecutors not to convict but to see that justice is done. Art. 45.201, C.C.P.

All prosecutions in municipal court shall be conducted by the city attorney or deputy city attorney. Some cities have in-house city attorneys; others contract with solo practitioners or law firms. Depending on the volume of complaints filed in a municipal court, prosecution may entail some or all of an attorney's time. The prosecutor may also be the county attorney of the county in which the municipality is situated if the county attorney so desires. In this case, the county attorney is not entitled to receive any compensation. It should be emphasized that Article 45.201 of the Code of Criminal Procedure only requires an attorney representing the State to be present to conduct "prosecutions" at bench or jury trials. Tex. Atty. Gen. Op. GA-0067 (2003). Thus, prosecutors are not required to be present when a defendant makes an appearance to enter a plea.

1. Qualifications and Term of Office

The city attorney's term, subject to conditions regarding removal, may be set by ordinance, charter, or the agreement for employment. Deputy city attorneys assigned as municipal court prosecutors work at the pleasure and discretion of the city attorney. As the prosecutor must be a city attorney or deputy city attorney, the prosecutor necessarily must be a licensed attorney in Texas.

2. Duties and Responsibilities

Just as municipal court clerks perform many of the same duties as their counterparts at the county and district levels, the city prosecutor performs basically the same role as the prosecuting attorney in other criminal trial courts. Although most cases in municipal courts are less complex than those in county and district courts, the volume of cases is much greater. The prosecutor's time for case preparation and consultation with police officers, witnesses, and complainants is usually limited.

Because prosecutors, not judges, decide which complaints are filed in the court, only the prosecutor should advise and direct peace officers in preparing criminal cases. The prosecutor's role is to seek justice, to screen out or to ask for dismissal of cases where there is insufficient evidence or evidence wrongfully gathered, and to seek convictions fairly and only of the guilty. Judges should be mindful that prosecutors have discretion over which cases to prosecute and trial strategy. Prosecutors, however, should be mindful that they cannot dismiss charges or cases, except upon written grounds and with the judge's approval. Arts. 45.201 and 32.02, C.C.P.

Duties of the city prosecutor are as follows:

- investigate the facts surrounding alleged offenses and decide whether to file charges;
- prepare and draft complaints (the clerk may assist the prosecutor in preparing routine complaints where that preparation is a ministerial duty; however, the ultimate responsibility for the legal sufficiency and accuracy of complaints belongs to the prosecutor);

- administer oaths to persons filing complaints before the court (Art. 45.019(e), C.C.P.);
- prepare and present the State’s case at trial;
- arrange for the appearance of the State’s witnesses, including requests for subpoenas and attachments;
- file motions with the court that may be necessary to present cases;
- request dismissal of cases under proper circumstances;
- advise the police department in case preparation, legal procedures, and requirements, and other legal questions; and
- discuss pending cases with defendants or, if represented by counsel, with their attorneys prior to the courtroom hearing.

With the county attorney’s consent or assistance, prosecutors are statutorily allowed to prosecute cases on appeal out of a municipal court. Art. 45.201, C.C.P. The prosecutor may make arrangements with the county attorney or criminal district attorney and the county judge to prosecute municipal court appeals.

E. The Bailiff

Ultimately, the judge has responsibility for maintaining order in his or her courtroom. Section 21.001(b) of the Government Code provides that “a court shall require that proceedings be conducted with dignity and in an orderly and expeditious manner and control the proceedings so that justice is done.” It is, therefore, up to the judge to ensure that all users of the court are afforded safe and orderly proceedings. This is an impossible task to administer alone, however, so judges rely on the court bailiff to help.

1. Qualifications

Chapter 53 of the Government Code mandates the appointment of bailiffs in certain courts in Texas; however, there is no universal statutory requirement for municipal courts to have a bailiff. There are a few exceptions for cities that have statutory courts of record. Even though Texas law does not require the use of a bailiff in most municipal courts, it is the best practice to have at least one bailiff.

Just as there is no statutory requirement, there are also no statutory qualifications for bailiffs in municipal court. Minimum qualifications for the position of bailiff commonly include the following: high school graduation or G.E.D.; knowledge of the operations, procedures, and decorum of the municipal court; and experience in dealing with the public. Some cities require bailiffs to be at least 18 years of age, some 21. Many cities require the bailiff to be a licensed peace officer because peace officers possess arrest powers and can carry a weapon, while a non-peace officer’s authority to arrest, carry a firearm, or enforce contempt orders would be limited.

Some bailiffs are licensed peace officers dedicated to working with the court. Others are warrant officers or city marshals who also provide security for the court when court is in session, are peace officers who are “on loan” from the police department to the court when needed, or are retired peace officers. Other courts hire outside, private security companies or court security officers who are not peace officers.

2. Duties and Responsibilities

The bailiff is directly responsible to the judge and has the duty of maintaining order, security, and decorum while the court is in session. The bailiff generally opens and closes court sessions. He or she may be assigned other duties, including maintaining custody of and escorting those convicted to the clerk to arrange payment. Bailiffs also administer oaths to witnesses (if directed and authorized by the judge); attend to the jury, keeping them together and separate from all other citizens during deliberations; carry written communications between the jury and the judge; and inform the judge when a verdict has been reached. Bailiffs may also assist defendants and other citizens present by explaining court procedures and answering questions.

F. The Warrant Officer

It is the duty of every peace officer to preserve the peace within the officer's jurisdiction through the use of all lawful means. Art. 2.13, C.C.P. Peace officers engage in various law enforcement duties when arresting offenders without a warrant (i.e., issuing a citation or making a custodial arrest for an offense committed in view), applying to a magistrate for an arrest warrant when the officer has probable cause to believe a person has committed an arrest, and executing lawful process issued to the officer by a magistrate or a judge.

The primary role of the warrant officer is to serve all processes or papers issued by a municipal court; in other words, to make arrests on warrants or *capias pro fines* or deliver summonses to the parties to whom they are addressed. The Code of Criminal Procedure provides that all process issuing out of the municipal court shall be served by a police officer or city marshal under the same rules that apply to service by sheriffs and constables of process issuing out of justice court. Art. 45.202, C.C.P. Failure, neglect, or refusal to serve process may make the responsible officer liable for a fine of \$10 to \$200 for contempt of court. Art. 2.16, C.C.P.

Some cities have city marshal departments that work under the court; often, the court administrator is the chief administrator of the law enforcement agency that is the marshal's office. In most cities, the duty to serve process is often assigned to the police department and sometimes to those specially designated as warrant officers. As peace officers, warrant officers must comply with the minimum educational, training, physical, mental, and moral standards established by the Texas Commission on Law Enforcement (TCOLE).

G. Defense Counsel

The role of defense counsel is to represent a client zealously within the bounds of the law. Like the prosecutor, the defense counsel has a duty to maintain public respect for the system. Even citizens who have committed crimes are entitled to have their rights respected and to be treated fairly. Upon a guilty verdict, defense counsel has a duty to argue for fair punishment.

Most municipal court defendants appear *pro se*, or on their own behalf without an attorney. If a defendant does hire an attorney, the attorney should submit a letter of representation to the court, stating that the attorney represents that defendant. Once a court has a letter of representation, the court should communicate with the defendant through his or her attorney. While *pro se* defendants are not considered officers of the court, defense attorneys are.

True or False

- Q. 1. The judge plays an adversarial role in court. _____
- Q. 2. If there is not a prosecutor, the judge or the clerk should serve as the prosecutor and represent the State. _____
- Q. 3. The prosecutor, with the consent of the judge, has the authority to dismiss a case. _____
- Q. 4. The prosecutor is responsible for preparing and drafting complaints and may ask the clerk for assistance. _____
- Q. 5. Both a bailiff and a warrant officer must comply with TCLEOSE training and standards. _____
- Q. 6. How often must the statement of officer and oath of office be filed? _____

- Q. 7. Which must be filed first: the oath of office or the statement of officer? _____

PART 2 AUTHORITY OF A JUDGE

As previously stated, judges have the authority to perform judicial, magistrate, and ministerial duties.

A. Judicial Duties

Judicial duties require an exercise of discretion. Judicial duties are found throughout the codes and statutes and prescribe an action to be done by the judge or the court. Judicial acts include accepting pleas, assessing fines, and dismissing cases when permitted by statute, issuing warrants and capiases, or granting driving safety courses. Tex. Atty. Gen. Op. H-386 (1974).

A judge is not permitted to delegate duties conferred by law unless there is express statutory or constitutional authorization permitting the judge to do so. *Newsom v. Adams*, 451 S.W.2d 948 (Tex. Civ. App.—Beaumont 1970); Tex. Atty. Gen. Op. H-386 (1974). Thus, unless there is clear language in the statutes permitting the judge to delegate duties to the clerk, the judge may not do so. The judge may not delegate to the clerk any action that the judge is statutorily bound to take on a case that requires an interpretation or application of law or determination of fact based upon the circumstances in any particular case. Put simply, if the law says a judge has to do something, or if a decision has to be made on the law or facts of a case, the judge may not delegate the task: the judge must decide. Hence, a judge is not permitted to delegate to a court clerk a duty such as taking a plea or setting a fine.

Other duties that judges may perform, such as ministerial duties, may be delegated to court clerks because ministerial duties require no discretion and are generally administrative in nature, such as keeping and maintaining a docket, preparing paperwork for the judge's signature, maintaining files, and providing customer service to court users.

1. Judicial Duties that May Not be Delegated

The list below, although not exhaustive, sets out judicial duties that *may not* be delegated to a clerk.

Judicial Duty	Cite
Setting bail to secure the defendant's appearance after a case has been filed in municipal court	Article 45.016, C.C.P.
Issue arrest warrants for defendants whose cases are filed in municipal court	Article 45.014, C.C.P.
Issue a capias for a defendant after a charge has been filed in municipal court	Article 23.04, C.C.P.
Issue a summons for a defendant when requested by the prosecutor	Article 23.04, C.C.P.
Issue a summons for the parent of a person under 17	Articles 45.0215 and 45.054, C.C.P.
Forfeit bail	Articles 4.14 and 45.044, C.C.P.; Section 29.003(e), G.C.
Take and accept pleas of guilty, nolo contendere, or not guilty	Articles 27.14, 27.16, 45.021, 45.0215, 45.022, and 45.024, C.C.P.; Attorney General Opinion H-386
Enter a plea of not guilty for a defendant who refuses to plead	Article 45.024, C.C.P.
Grant a motion for new trial made after a defendant entered a plea while detained in jail	Article 45.023, C.C.P.
Conduct pre-trial hearings	Article 28.01, C.C.P.
Grant continuances	Chapter 29, C.C.P.
Conduct trials	Article 45.025, C.C.P.
Issue a writ to summon a venire (jury panel)	Article 45.027, C.C.P.
Rule on challenges to the array (membership) of the jury pool	Article 36.07, C.C.P.
Form the jury and administer the oath	Article 45.030, C.C.P.
Charge the jury	Article 45.033, C.C.P.
See that the verdict is in proper form and render judgment and sentence following a jury trial	Article 45.036, C.C.P.
Enter judgments	Article 45.041, C.C.P.

Setting fines	Article 45.041, C.C.P.; Attorney General Opinion H-386
Grant deferred disposition	Article 45.051, C.C.P.
Grant a driving safety course	Article 45.0511, C.C.P.
Grant teen court	Article 45.052, C.C.P.
Determine how a defendant pays fine and costs (time payment, extensions, community service)	Articles 45.041 and 45.049, C.C.P.
Grant community service or tutoring in satisfaction of fine or costs for juvenile defendants	Articles 45.049 and 45.0492, C.C.P.
Grant jail-time credit	Articles 42.03, 45.041, and 45.048, C.C.P.
Determine indigence	Articles 43.091, 45.046, 45.048, and 45.049, C.C.P.
Waive fine and court costs after a defendant defaults and the judge determines that the defendant is indigent and that performing community service would be an undue hardship	Article 43.091, C.C.P.
Rule on a motion for new trial	Article 45.038, C.C.P.; Section 30.00014, G.C.
Set and approve appeal bonds	Article 45.0425, C.C.P.
Issue a capias pro fine	Article 45.045, C.C.P.
Commit a defendant to jail for unpaid fines/costs	Article 45.046, C.C.P.
Conduct stolen or seized property hearings	Chapter 47, C.C.P.
Dismiss cases when required by law or upon prosecutor motion	Article 32.02, C.C.P.
Inform a juvenile and any parent in open court of the juvenile's expunction rights and provide them with a copy of the law	Article 45.0216, C.C.P.
Order convictions and records expunged	Articles 45.0216 and 45.055, C.C.P.; Section 106.12, A.B.C.; Section 161.255, H.S.C.
Hold a person in contempt	Article 45.050, C.C.P.; Section 21.002, G.C.

2. Consequences of Delegating Judicial Duties

If a judge delegates a judicial duty to a court clerk, there can be consequences. A number of cases illustrate such consequences.

In the case *Sharp v. State*, 677 S.W.2d 513 (Tex. Crim. App. 1984), a City of Houston municipal court clerk issued a *capias* for violating the “motorcycle helmet safety law.” The defendant was later arrested on the *capias* and as a result of this arrest was charged with and convicted of possession of methamphetamine. The defendant appealed the possession case. The appellate court held that the deputy court clerk did not have authority to issue a *capias*. Because a magistrate (judge) failed to direct the issuance of the *capias* and to determine probable cause, the defendant’s arrest was illegal; thus, the evidence discovered as a direct result of the arrest had to be suppressed.

The procedure to prosecute in Houston was initiated with an officer’s citation for the helmet offense. According to the established procedures, if the defendant failed to appear in court to answer the charge, the clerk was delegated the authority to stamp the judge’s name and issue the *capias*. The Court of Criminal Appeals reviewed this procedure and found that, although Texas municipal clerks were empowered to perform ministerial tasks such as preparing process under the direction of the judge, they were neither authorized nor trained to determine probable cause to support a warrant ordering a citizen to be arrested. There was no evidence that a judge intervened at any point in the process. The Court of Criminal Appeals concluded that since a judge did not determine whether there was probable cause to issue the arrest warrant (*capias*) and since a judge did not direct the issuance of the *capias*, the defendant’s arrest was illegal. Hence, all evidence obtained from the arrest was excluded.

Crane v. Texas, 759 F.2d 412 (5th Cir. 1985) points out civil liability when a judge allows someone else to devise a policy delegating a judicial duty. In this case, a district attorney and county attorney were held civilly liable and denied governmental immunity because they devised a policy authorizing the county clerk rather than the judge to issue misdemeanor *capiases*.

In *Daniels v. Stovall*, 660 F. Supp. 301 (S.D. Tex. 1987), a justice of the peace delegated his authority to affix his rubber stamped signature to a mental health warrant outside his presence. He reviewed the warrant and adopted it the next business day. The court cited favorably Attorney General Opinion JM-373 (1985), which states that a judge may not delegate authority to affix her or his signature unless the signature is affixed under the judge’s personal supervision. Generally, judges have absolute immunity for damages for acts performed in their judicial capacity. This case found, however, that since the judge delegated a judicial duty to his clerk and the clerk performed the duty, neither was immune from civil liability.

In *Daniels*, the court discussed the approved factors for determining whether a particular action is a judicial action that would be entitled to immunity. The issuance of a mental commitment order is a judicial act, but the manner in which it was issued prevented the act from being covered by judicial immunity. The factors for determining whether a particular action is judicial are:

- whether the precise act complained of is a normal judicial function;
- whether the act occurred in the courtroom or appropriate adjunct spaces such as the judge’s chambers;
- whether the controversy centered around a case pending before the court; and
- whether the act arose directly out of a visit to the judge in his or her official capacity.

B. Magistrate Duties

It is important that when acting in an official capacity, all judges are able to differentiate between judicial and magistrate duties and authorities. Regardless of which hat (judge or magistrate) a municipal judge is wearing, he or she must be impartial, ensure that justice is done, and base decisions on the law as applicable to the facts.

Magistrate duties, like judicial duties, cannot be delegated to municipal court clerks.

The following is a list, although not exhaustive, of magistrate duties that a municipal judge has the authority to perform as a magistrate.

Magistrate Duties	Cite
Issue emergency protection orders for an offense involving family violence	Article 17.292, C.C.P.
Issue a warrant when any person informs the judge, under oath, of an offense about to be committed	Article 7.01, C.C.P.
Conduct peace bond hearings	Article 7.03, C.C.P.
Verbally order a peace officer to arrest, without warrant, when a felony or breach of the peace is committed in the presence or within the view of a magistrate	Article 14.02, C.C.P.
Accept complaints (probable cause affidavit) and issue arrest warrants and summonses (these complaints are for Class A and B misdemeanors and felony offenses)	Article 15.17, C.C.P.
Give magistrate warnings after arrest	Article 15.17, C.C.P.
Take a plea and set and collect a fine when a defendant is arrested on an out-of-county warrant for a fine-only offense	Article 15.18, C.C.P.
Conduct examining trials in felony cases to determine probable cause	Article 16.01, C.C.P.
Determine the sufficiency of sureties	Chapter 17, C.C.P.
Order a defendant to submit to an examination in a mental health facility determined by a local mental health authority on that authority's request	Article 16.22, C.C.P.
Set and accept bail, including personal bonds	Chapter 17, C.C.P.
Issue search warrants; mere evidence may issue only from an attorney judge	Chapter 18, C.C.P.
Move to dispose of the weapon (destroy or sell) if no prosecution or conviction will occur when a weapon has been seized	Article 18.19, C.C.P.
Direct a peace officer to prevent a person from leaving a facility to prevent the spread of communicable disease	Section 81.162, H.S.C.

C. Ministerial Duties

Ministerial duties are duties in which there is nothing left to discretion. They are generally administrative in nature, pertain to effectively and efficiently managing the cases filed in the court, and are imposed by law. Although Canon 3C(1) of the *Code of Judicial Conduct* requires judges to diligently and promptly discharge administrative responsibilities and to maintain

professional competence in judicial administration, judges typically delegate ministerial and administrative duties to the clerks.

Statutes provide little guidance regarding ministerial duties. It is only in understanding judicial duties and knowing what a judge cannot delegate that courts determine what duties are ministerial and administrative. Generally, ministerial and administrative duties include the following tasks, which can be performed by either judges or clerks:

- records management;
- financial management;
- office management;
- preparation of processes (warrants, capias, capias pro fine, judgments, summonses, subpoenas, orders);
- preparation of paperwork for defendants requesting a driving safety course or being granted a deferred disposition;
- preparation of the budget;
- collection of data for and timely submission of state reports;
- coordination of trial processes;
- coordination of community service and other alternative sentencing options; and
- coordination of orders with the police department.

D. Judicial Authority

Although judges are empowered to perform a variety of judicial, magistrate, or ministerial duties, there are few duties that deserve special mention.

1. Administering Oaths

Article 45.019 of the Code of Criminal Procedure grants power to administer oaths to a person swearing to a complaint before the municipal court. The following court officials have authority to administer this oath:

- municipal judge;
- clerk of the court;
- deputy court clerk;
- city secretary;
- city attorney; and
- deputy city attorney.

Section 602.002 of the Government Code provides authority for a judge, retired judge, or clerk of a municipal court to administer any oath. In general-law cities, Section 29.006 of the Government Code provides that a judge appointed to act for the municipal judge, who is temporarily unable to act, has all powers and duties of the office. In home-rule cities, Section 29.007 of the Government Code provides that associate judges have the same powers as the presiding judge. Therefore, associate or alternate judges may administer oaths. It makes sense

that a judge could administer an oath because the judge themselves would have taken an oath upon appointment or election.

2. Dismissing Cases

a. In General

Prosecutors typically have the power to dismiss cases, absent specific statutory authority to the contrary. Texas law generally follows that common law rule, but includes judges in the dismissal process. Art. 32.02, C.C.P. In the Texas model, dismissals may occur through constitutional or statutory authority vesting a trial court with dismissal power, or on the motion of the prosecuting attorney. *State v. Morales*, 804 S.W.2d 331 (Tex. App.–Austin 1991). Typically, courts may not dismiss without the prosecutor’s consent, and prosecutors cannot dismiss without the court’s approval. *State v. Johnson*, 821 S.W.2d 609 (Tex. Crim. App. 1991).

If the prosecutor decides not to prosecute a case, the prosecutor must provide a reason in writing for the dismissal. The prosecutor’s motion to dismiss is filed with the court. Article 32.02 of the Code of Criminal Procedure requires judicial consent or approval for a case to be dismissed, also known as, the judicial veto. Generally, a judge cannot dismiss a case, except by consenting to and granting a prosecutor’s motion and grounds presented. *Flores v. State*, 487 S.W.2d 122 (Tex. Crim. App. 1972).

b. Mandatory v. Discretionary Judicial Duty to Dismiss

Some statutes create a mandatory judicial duty to dismiss a criminal charge. These include where the defendant is entitled to a dismissal pursuant to law, such as upon successful completion of a deferred disposition, driving safety course, or teen court program. Arts. 45.051, 45.0511, and 45.052, C.C.P. In these instances, judges shall dismiss the charge in the absence of a prosecutor’s motion. Arguably, a judge could also dismiss a case without involvement from the prosecutor when the court lacks jurisdiction over the offense because it is either not a fine-only offense or was committed outside the court’s territorial jurisdiction.

Other statutes give the judge discretion to decide whether or not a case could be dismissed, even without involvement from the prosecutor. These statutes are commonly referred to as “compliance dismissals” and are available when the defendant remedies certain defects. Most of the compliance dismissals available to defendants are discretionary, meaning it is up to the judge whether to accept the proof of remedying the defect and dismiss upon payment of some administrative fee set by statute. However, there are a few compliance dismissals that provide for a mandatory dismissal if the defendant meets certain criteria. Compliance dismissals are discussed at length in the *Traffic Law* chapter of this Study Guide as the statutes that authorize such dismissals are located in the Transportation Code.

Judges should be cautious whenever exercising their power to dismiss. The general rule is that a judge’s authority to dismiss is limited, and without express authority to dismiss, the judge should never dismiss without a motion from the prosecutor. Remember, it is the prosecutor’s case on behalf of the State of Texas; therefore, the only person who can choose to dismiss is the prosecutor. In no case should the clerk or a peace officer attempt to dismiss a case. Such practice could amount to a federal and state crime for “ticket fixing.”

3. Controlling the Courtroom

Section 21.001 of the Government Code provides courts with all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders. It also provides that the court shall require that proceedings be conducted with dignity in an orderly and expeditious manner so that justice is done. This is referred to as the court's inherent power. To maintain control, judges have contempt power to regulate conduct in the courtroom. Sec. 21.002, G.C. Contempt power must be reasonably exercised and not be arbitrary; it is often a last resort. Persons in a courtroom should understand the type of conduct required and the consequences of not complying. Judges should establish rules and procedures for courtroom conduct and notify the public of those rules.

4. Marriages

Section 2.202 of the Family Code outlines who has the authority under Texas law to perform a marriage ceremony. It took more than 30 years for municipal judges to be added to that list, but in 2009, the Legislature did provide municipal judges with the authority to conduct a marriage ceremony. Under a similar line of reasoning as used to determine which judges can administer an oath, it is common understanding that any municipal judge can conduct a marriage ceremony, although judges would be smart to consider the practical, legal, and ethical implications of being authorized to do so.

In 2013, the Legislature again amended Section 2.202 to provide that a retired municipal judge may also conduct a marriage ceremony. A retired judge is defined as a former judge who is vested in the Judicial Retirement System of Texas Plan One or Two or who has an aggregate of at least 12 years of service as a judge or justice of any type of court listed in Subsection (a)(4) of Section 2.202.

Judges who are interested in conducting marriage ceremonies should review the laws associated with the marriage license and ceremony found in Chapter 2 of the Family Code.

E. Disqualification and Recusal

Defendants in criminal trials have the right to a fair trial. In order for a trial to be fair, the judge presiding must be neutral and detached. The authority of a judge to preside over a criminal case is tempered by recusal and disqualification provisions found in the Texas Constitution and under state statutory law. Article V, Section 11 of the Texas Constitution provides three grounds for disqualifying a judge from sitting in any case:

- the judge was counsel in the case;
- the judge "may be interested" in the outcome of the case; or
- one of the parties is related to the judge.

Similarly, Article 30.01 of the Code of Criminal Procedure provides instances in which the judge is disqualified regardless of the judge's discretion. The judge is disqualified as a matter of law when a judge:

- is the injured party;
- has been counsel for the State or the accused; or
- is connected to the accused or the party injured by consanguinity or affinity within the third degree as determined by Chapter 573 of the Government Code.

Disqualification is mandatory even if the judge did not know about the relationship. *Ex parte Vivier*, 699 S.W.2d 862 (Tex. Crim. App. 1985). The defendant cannot waive the judge's disqualification. *Gamez v. State*, 737 S.W.2d 315 (Tex. Crim. App. 1987).

While disqualification is mandatory, recusal lies in the judge's honest appraisal of the individual situation. Judges must recuse themselves if they feel they have a conflict of interest that would affect their ability to be fair and impartial. Canon 3B(5), Code of Judicial Conduct. While this determination can only be made in light of the specifics of a situation, Texas Rule of Civil Procedure 18b(2) states that a judge shall recuse when:

- the judge's impartiality might reasonably be questioned;
- the judge has a personal bias or prejudice concerning the subject matter or a party, or personal knowledge of disputed evidentiary facts concerning the proceedings;
- the judge or a lawyer with whom the judge previously practiced law is a material witness;
- the judge participated as counsel, adviser, or material witness in the matter in controversy or expressed an opinion concerning the merits of it while acting as an attorney in government service;
- the judge, judge's spouse, or a person within the 3rd degree of relationship to either the judge or judge's spouse is:
 - a party to the proceeding or an officer, director, or trustee of a party;
 - known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
 - to the judge's knowledge likely to be a material witness in the proceeding; or
- the judge, judge's spouse, or a person within the 1st degree of relationship to either the judge or judge's spouse is acting as a lawyer in the proceeding.

While the Court of Criminal Appeals has not expressly held Rule 18b(2) (the grounds for recusal) to be applicable in criminal proceedings, it has implicitly done so. More than one court of appeals has cited Rule 18b(2) in criminal cases on recusal questions.

The procedures for replacing a judge that has been disqualified or recused have changed significantly and it is critical that the court becomes familiar with the new laws. In 1999, the Legislature passed Section 29.012 of the Government Code, which provided that a municipal judge that is disqualified or recused can have a judge from another municipal court located in an adjacent city sit for that judge. In 2011, the Legislature repealed Section 29.012 and replaced it with a comprehensive set of procedures now located in Subchapter A-1 of Chapter 29. These new procedures took effect June 17, 2011. These procedures, adapted from Texas Rule of Civil Procedure 18a, are designed to accommodate all sizes of municipal courts and strike a balance between uniformity in application of the law and judicial efficiency. They are intended for use in any kind of criminal or civil case in which a municipal court has jurisdiction.

Q. 8. When can a mayor in a general-law city be the *ex officio* municipal judge?

- Q. 9. What governs the selection of municipal judges in a home-rule municipality?

- Q. 10. What must a general-law city do when a municipal judge is temporarily unable to act?

- Q. 11. What is a question of law? _____
- Q. 12. What is a question of fact? _____
- Q. 13. What is judicial discretion? _____
- Q. 14. When does a judge not have discretion to perform an action? _____

- Q. 15. Which kind of duty may a judge delegate to a court clerk? _____

True or False

- Q. 16. Clerks may set and take bail from a defendant. _____
- Q. 17. The clerk may ask the defendant how he or she wants to plea. _____
- Q. 18. When a defendant calls the court to request that the clerk reset his or her case to another trial date, the clerk may grant the continuance and reset the case. _____
- Q. 19. Clerks may not conduct trials. _____
- Q. 20. Clerks may set fines. _____
- Q. 21. Clerks may grant extensions and time payment plans to defendants. _____
- Q. 22. Clerks may require a defendant to pay a fine by performing community service. _____
- Q. 23. The judge has authority to waive the fine and costs after the defendant defaults on payment, is indigent, and unable to perform community service. _____
- Q. 24. Clerks may not issue arrest warrants. _____
- Q. 25. Municipal court clerks have the authority to issue a capias. _____
- Q. 26. Only a judge may issue a summons for a defendant. _____
- Q. 27. When a judge is not available, the clerk may grant deferred disposition or teen court.

- Q. 28. Judges can permit clerks to perform judicial duties and then later adopt the actions of the clerk. _____
- Q. 29. Municipal court clerks may stamp the judge's signature on court documents when the judge is on vacation. _____
- Q. 30. When a judge is in the office part-time, the clerk may use the judge's signature stamp to sign judgments on cases in which a defendant pays a fine at the clerk's office. _____
- Q. 31. Municipal court clerks may stamp the judge's signature on mental health commitments when the judge is not available and it is an emergency. _____
- Q. 32. Municipal court clerks cannot be held liable for performing a judicial duty if the judge

- requires the clerk to perform the duty. _____
- Q. 33. Municipal judges are magistrates. _____
- Q. 34. Municipal judges may perform duties that a magistrate has the authority to perform.

- Q. 35. Municipal judges, acting as magistrates, may issue emergency protection orders for an offense involving family violence. _____
- Q. 36. Only justices of the peace may conduct peace bond hearings. _____
- Q. 37. Municipal judges, acting as magistrates, may accept a complaint (probable cause affidavit) for a felony. _____
- Q. 38. Municipal court clerks may give magistrate warnings after a defendant is arrested when the municipal judge is not available. _____
- Q. 39. Municipal judges, acting as magistrates, may issue search warrants. _____
- Q. 40. Only justices of the peace may conduct license suspension hearings. _____
- Q. 41. Usually, clerks are responsible for establishing and maintaining a financial management program for the court. _____
- Q. 42. Although presiding judges have authority to administer the oath to someone swearing to a complaint, associate judges do not. _____
- Q. 43. A municipal judge may dismiss a case filed by a citation if the peace officer asks for the dismissal. _____
- Q. 44. When defendants present proof that they renewed an expired driver's license, the clerk may dismiss the case. _____
- Q. 45. Clerks may dismiss cases in which defendants renew an expired inspection certificate.

- Q. 46. Clerks may dismiss an offense for failure to maintain financial responsibility if the judge is on vacation. _____
- Q. 47. What power does a judge use to exercise control in the courtroom?

- Q. 48. What Code gives municipal judges the authority to conduct marriage ceremonies?

PART 3 AUTHORITY OF A COURT CLERK

A. Duties

Clerks have the authority to perform ministerial and administrative duties. Section 29.010(c) of the Government Code provides the general ministerial duties of a municipal court clerk, and requires the clerk to keep minutes of court proceedings, issue process, and generally perform the duties for the municipal court that a county clerk performs for a county court.

1. General Duties

Because statutes do not contain many specific duties for municipal court clerks, it helps to look at the general duties of the county court clerk. As can be seen in the chart below of general county clerk duties, there can be an analogy made with municipal court clerk duties. This list does not include every county clerk duty because many of their duties are specific to the county court and do not apply to municipal court. Set out in the following chart is a list of general duties of county court clerks and duties in municipal court that correspond.

County Clerk Duties	Corresponding Municipal Clerk Duties
Deposit fines and fees in the county treasury.	Deposit fines and fees in the city treasury.
Make a statement of fines and fees collected on the last day of each term of court.	Make reports to the city council of fines and fees.
Show from whom fees are received.	Keep records of money collected.
List jurors' names and length of service.	Keep records of names and length of service of citizens who serve on municipal court juries.
Transfer cases.	A transfer of a case is generally not applicable to municipal courts except when transferring a juvenile case to the juvenile court, or when a change of venue for a person allowed to participate in a teen court program has been granted.
Destroy archived, inactive records.	Destroy municipal court records retained for a period of time required by the State. (Check with the city secretary for a copy of the city's ordinance approved by the State Library and Archives Commission governing the retention and destruction of records. Without it, the clerk must get permission from the State Library to destroy records.)
Maintain fee books.	Keep a record of all fines, fees, court costs, and restitution collected by the court and prepare a bill of costs showing the defendant what fees and costs are payable.
Report monthly court statistics to the Office of Court Administration.	Report monthly court statistics to the Office of Court Administration.

2. Required Duties

The following is a list, although not exhaustive, of duties that court clerks are required to perform:

Required Clerk Duties	Cite
The judge or clerk shall keep a docket containing certain case information: the style and file number of each criminal case; offense charged; the defendant's plea and the date it was entered; the date the warrant, if any, was issued and returned; the date the trial, if any, was held and whether it was a bench or jury trial; the jury's verdict, if applicable, and the date; the judge and sentence of the court and the date given; the motion for new trial, if any, and the court's decision; and whether an appeal was taken and the date of that action.	Article 45.017, C.C.P.
The clerk of a court that does not provide online internet access to its criminal case records shall post in a designated public place in the courthouse notice of a prospective criminal court docket setting as soon as the clerk is notified of the setting.	Article 17.085, C.C.P.
Every clerk of a court of record shall keep a record of each case in which a person is charged with a violation of law regulating the operation of vehicles on highways. Magistrates and judges of non-record courts are required to keep these, but it is usually delegated to the clerk.	Section 543.201, T.C.
The clerk of every court in which there is a conviction or forfeiture of bail in a case involving a traffic offense must report it to the Department of Public Safety within seven days of the conviction or forfeiture. Judges and magistrates are also required to report.	Section 543.203, T.C.
When a jury shuffle is requested, the clerk randomly selects jurors by computer or another unbiased process and prints the names in the order selected on a new jury list. The clerk then delivers a copy of the list to the prosecutor and the defendant or his or her attorney.	Sections 62.107(c) and 62.108(a), G.C.; Article 35.11, C.C.P.
When a person files with the court a permanent exemption from jury duty, the clerk is required to promptly deliver a copy of the permanent exemption to the county tax assessor-collector.	Sections 62.107(c) and 62.108(a), (c), and (d), G.C.
When a defendant appeals, the clerk is required to forward the record to the appellate court.	<i>Whitsitt v. Ramsay</i> , 719 S.W.2d 333 (Tex. Crim. App. 1986)
When a forfeiture has been declared upon a bond, the judge or clerk shall docket the case upon the scire facias (a special docket for bond forfeitures) or upon the civil docket.	Article 22.10, C.C.P.
If a victim of family violence is not present when a magistrate's order of emergency protection is issued, the clerk must send him or her a copy.	Article 17.292(g), C.C.P.
If a magistrate suspends a concealed handgun license when issuing a magistrate's order of emergency protection, the judge or the	Article 17.293, C.C.P.

clerk is required to immediately notify the Texas Department of Public Safety.	
A magistrate's clerk is the custodian of any arrest warrants or affidavits made in support of the warrant. The warrants and affidavits are public information and the clerk has an affirmative duty to make a copy of the warrants and supporting affidavits available for public inspection after the warrants are executed.	Article 15.26, C.C.P.
The clerk is required to make a copy of the affidavit for a search warrant after it has been executed and have it available for public inspection in the clerk's office during normal business hours.	Article 18.01(b), C.C.P.

3. Administrative Functions

Municipal court clerks generally perform administrative functions of the court, including:

- preparing process (complaints, warrants, capiases, summons, subpoenas, etc.) and coordinating with law enforcement;
- preparing correspondence and notices;
- processing fine payments and bonds (appearance and appeal bonds);
- maintaining accounting records of the court;
- managing the office and personnel;
- coordinating trials and appearances (includes juvenile cases);
- maintaining records;
- producing reports;
 - monthly reports to the Texas Judicial Council/Office of Court Administration;
 - notice of final convictions and bond forfeitures (reported to DPS);
 - notice of the completion date of driving safety course (reported to DPS);
 - teen court dismissals (reported to DPS);
 - quarterly court costs reports (reported to State Comptroller's Office);
 - notice of violation of *Nonresident Violator Compact* (reported to DPS);
 - reports to city council, city manager, and judge;
- coordinating alternative sentencing (driving safety courses, deferred disposition, teen court);
- coordinating community service;
- coordinating juvenile cases and rehabilitative sanctions;
- processing dismissals;
- coordinating administrative and other hearings;
- processing bond forfeitures;
- overseeing budget;
- accepting complaints and entering on docket; and

- performing any other ministerial function that may be delegated by the judge.

B. Authorities

1. Summoning the Jury

When a defendant does not waive a trial by jury, the judge must issue a writ commanding the proper officer to summon a venire (a list of prospective jurors) from which six qualified persons shall be selected to serve as jurors in the case. The judge may command the court clerk to summon jurors. Art. 45.027, C.C.P.

2. Administering the Oath to Jurors

The judge may direct the court clerk to administer the oath to venire persons (potential jurors) for voir dire (questioning of jurors under oath to determine their qualifications for jury service). Art. 35.02, C.C.P. After six jurors are selected, the court may also direct the clerk to administer an oath to the jurors to properly try the case. Arts. 45.030 and 35.22, C.C.P.

3. Administering the Oath to Complainant

Article 45.019 of the Code of Criminal Procedure grants the power to administer the oath to a person swearing to a complaint before the municipal court. The following court officials have the authority to administer this type of oath:

- municipal judge;
- clerk of the court;
- deputy court clerk;
- city secretary;
- city attorney; and
- deputy city attorney.

Section 602.002 of the Government Code provides authority for a judge, retired judge, or clerk of a municipal court to administer any oath. Section 29.007(f) of the Government Code also provides authority for a clerk in a home-rule municipality who is an appointed or elected clerk to administer oaths. It makes sense that a clerk who has previously taken the oath of office upon election or appointment would have the authority to administer an oath under both the Government Code provisions and Article 45.019.

4. Issuing Subpoenas

The issuance of an arrest warrant, summons, *capias*, or *capias pro fine* is a judicial duty that cannot be delegated to the clerk. However, a criminal defendant has the right to have some type of compulsory process (subpoena) for obtaining witnesses. Art. 1.05, C.C.P. As there is no discretion regarding whether to issue a subpoena, a municipal court clerk has the authority to issue a subpoena. In fact, a clerk must issue a subpoena if requested. *Edmondson v. State*, 43 Tex. 230 (1875).

Article 24.01(d) of the Code of Criminal Procedure states that a judge or a clerk issuing a subpoena shall sign the subpoena and indicate on it the date it was issued, but the subpoena need not be under seal. Art. 45.012(g), C.C.P.

5. Authenticating Acts

Article 45.012(g) of the Code of Criminal Procedure requires non-record municipal courts to impress a seal on all documents, except subpoenas, issued out of the court and to use the seal to authenticate the acts of the judge and clerk. Section 30.000125 of the Government Code governs the use of the court seal for courts of record. These two statutes are similar in that they both require the seal to be impressed on all documents, except subpoenas, issued out of the court and to authenticate the acts of the judge and clerk. The two statutes are different in that Article 45.012 does not provide for the wording of the seal, but Section 30.000125 does contain specific wording for the municipal courts of record seal. That statute requires the following phrase to be included on the seal: “Municipal Court of/in _____, Texas.” Non-record municipal courts may want to consider using the same or similar wording on their seal.

Neither of the two statutes provides for the appearance of the seal. Before 1999, there was a statute requiring the municipal court seal for both record and non-record municipal courts to contain a five-point star, but that statute was repealed. Although the courts no longer have guidance on the appearance of the seal, most courts have retained the appearance that was once required.

Both the judge and the clerk have the authority to impress the court seal on documents issuing out of the court.

C. Custodian of the Funds

Article 17.02 of the Code of Criminal Procedure requires peace officers to deposit cash bond money with the custodian of the funds of the court. Generally, the court clerk is designated as the custodian of the funds of the court. The officer receiving the funds shall receipt the funds, and if the bond is to be refunded, the bond should be refunded to the person whose name is on the receipt. If a receipt cannot be produced, the bond may be refunded to the defendant.

Clerks are also often designated as the officer to receive or collect payment of fines and costs. Chapter 103 of the Code of Criminal Procedure and Chapter 133 of the Local Government Code provide procedures and requirements for officers who receive or collect payments of court costs and fines.

D. Fraudulent Documents

When a court clerk has a reasonable basis to believe in good faith that a document or instrument previously filed, recorded, offered, or submitted for filing is fraudulent, the clerk shall: (1) notify in writing the aggrieved person against whom the purported judgment, act, order, directive, or oral process is rendered; or (2) if the document or instrument purports to create a lien on real or personal property, notify the aggrieved person in writing at the stated or last known address of the person named in the document. The clerk is required to provide this written notice no later than the second business day after the date that the document or instrument is offered or submitted for filing. Sec. 51.901, G.C.

The clerk is also required to post a warning sign with letters at least one inch in height that is clearly visible to the general public near the clerk's office stating:

IT IS A CRIME TO INTENTIONALLY OR KNOWINGLY FILE A FRAUDULENT COURT DOCUMENT OR INSTRUMENT.

Section 51.904, Government Code

E. Standing Orders

Many clerks will read the above sections in fear that they are improperly performing judicial duties because they have orders in their court allowing the clerk to grant a continuance or set the fine or grant a driving safety course. These orders are called "standing orders" and are an excellent tool to help improve the court's efficiency when used correctly. Standing orders are written orders from the judge directing court staff on how to perform a specific procedure. They must be signed by the judge and should be accessible to all court staff to ensure they are being followed.

Although judges may not delegate judicial duties to court clerks, many processes in the municipal court setting are adversely affected when the volume of cases is so large to prevent every case from appearing before the judge or when the judge is only at the court part-time. To combat these issues, standing orders direct the court staff on how the judge will rule in a particular and specific set of circumstances to allow the clerk to go ahead and process the case as though the judge had entered that order. Some examples of standing orders include:

- Allowing the clerk to process a driving safety course request if the defendant meets specific criteria. The judge will still have to grant the request by signing the order/interim judgment prepared by the clerk.
- Allowing the clerk to process a deferred disposition order if the defendant meets specific criteria. Again, the judge will still have to grant the deferral by signing the order prepared by the clerk.
- Allowing the clerk to reschedule a trial or hearing upon receipt of a motion for continuance. Many courts allow one continuance per side or some other formula so that the clerk knows exactly when the judge will grant the continuance.
- Window fines or standard fines that allow the clerk to inform the defendant what the fine will be upon a plea of guilty or no contest without that defendant having to appear before the judge for sentencing.

Allowing the clerk to set the defendant up on a payment plan without having to see the judge. Most of these standing orders set a formula requiring the defendant to pay so much down and limit the length of the plan to a set number of months.

Judges have complete discretion over whether or not to utilize standing orders. Those judges who are interested in issuing some standing orders should consult with other judges or contact TMCEC for examples.

Q. 49. What is a general-law city? _____

Q. 50. In a general-law city, is the municipal court clerk hired, appointed, or elected? _____

Q. 51. What is a home-rule city? _____

Q. 52. In a home-rule city is the municipal court clerk hired, appointed, or elected? _____

True or False

Q. 53. City secretaries may never hold the office of court clerk. _____

Q. 54. In a general-law city, a court clerk automatically serves for a two-year term unless the city provides by ordinance for a longer term. _____

Q. 55. In a general-law city, the city manager may fill a vacancy for the unexpired term of a court clerk's office. _____

Q. 56. Every time someone is elected, appointed, or reappointed, he or she is required to swear to an anti-bribery statement and to take an oath of office. _____

Q. 57. An elected or appointed official may perform official duties before filing the anti-bribery statement with the official records of the office. _____

Q. 58. List the general duties of the municipal court clerk. _____

Q. 59. If a city does not have an ordinance governing the destruction of records and a clerk wants to destroy records, what must the clerk do? _____

True or False

Q. 60. Both clerks and judges may establish and maintain a financial management program for the court. _____

Q. 61. Court clerks may prepare warrants but not sign them. _____

Q. 62. Only judges may grant driving safety courses, but clerks may give defendants the paperwork on court requirements for processing their cases. _____

Q. 63. What type of records is a municipal court clerk of a court of record required to keep regarding traffic offenses? _____

Q. 64. In non-record courts, who is required to keep records of traffic offenses? _____

- Q. 65. Who is required to report convictions and bond forfeitures of traffic offenses to the Department of Public Safety? _____

- Q. 66. When a prospective juror files a permanent exemption with the municipal court clerk, what is the clerk required to do? _____

- Q. 67. When either the defense or prosecution demands a jury shuffle, what is the clerk required to do? _____

- Q. 68. When a defendant appeals his or her case, what is the clerk required to do? _____

- Q. 69. What is a clerk required to do when a bond forfeiture has been declared? _____

- Q. 70. What is a clerk required to do when the victim is not present when an emergency order of protection is issued? _____

- Q. 71. What must a clerk or magistrate do when the magistrate suspends a concealed handgun license in an emergency protection order? _____

- Q. 72. What is a clerk required to do after warrants have been executed? _____

- Q. 73. Who is custodian of the funds of the court in your city? _____
- Q. 74. When a defendant does not waive a jury trial, when may the clerk summon prospective jurors? _____
- Q. 75. When may the clerk administer the oath to prospective jurors for voir dire? _____

- Q. 76. What information is required to be entered on the docket? _____

- Q. 77. Why may judges delegate the maintenance of the docket to the clerks? _____

- Q. 78. List what a clerk is required to do concerning fraudulent documents. _____

True or False

- Q. 79. Court clerks, deputy court clerks, and city secretaries may administer an oath to someone swearing to a complaint. _____

Q. 80. Municipal court clerks may administer an oath pertaining to any matter in municipal court. _____

Q. 81. Judges may ask the clerk to administer the oath to the six persons chosen for a jury.

Q. 82. Why do municipal court clerks have authority to issue subpoenas? _____

Q. 83. What wording goes on a non-record municipal court seal? _____

Q. 84. What is the wording on a municipal court of record seal? _____

Q. 85. What is the purpose of the municipal court seal? _____

PART 4 IMAGE OF THE COURT

A. Public Perception

Image is an important part of public perception. Although the image of the municipal court is affected by many different factors, professionalism and impartiality of the court staff are perhaps the most important traits that command respect.

B. Court Decorum

It is essential that judges and clerks conduct themselves and their courts with the utmost decorum and dignity. Decorum requires observance of correct judicial procedure and custom, as well as exercising courtesy before everyone who appears in court. For the court to be effective, it must deserve the respect of the people. Courteous behavior does not guarantee that every person will reciprocate, but it does entitle the court to command that people behave correctly when they are treated with respect.

The fact that the judge and court staff must remain neutral does not mean that they should be detached from the public. Many courts have adopted an innovative management style to running their courts where all defendants, witnesses, attorneys, victims, and staff from cooperating departments are viewed as customers.

C. Court Operations

The court must strive to be accessible to perform its ministerial, clerical, judicial, and magisterial functions by adopting regular hours and being on call for hardship or emergency cases. The court should inspect the physical site and ensure that it is accessible to persons with disabilities.

The physical appearance of the municipal court significantly influences the attitudes of those appearing before the court and the morale of the officials of the court. The court should have facilities that encourage public respect and confidence in the judicial system.

The location of the municipal court is a matter for each city to decide according to its local conditions and needs. An ideal location would be in a separate public building or portion of city hall. An alternative might be to utilize the city council chambers or a city auditorium for the courtroom. The court should not be located within the confines of the police department.

In the case of part-time judges, the court should not be situated in the judge's other place of employment, in the judge or clerk's home, or in any other place that might discourage public attendance or respect. Court should be held in a place, even though it may be humble, that is separate from other operations and devoted for that time only to hearings to determine facts, apply laws, and administer justice.

Q. 86. Explain, in your own words, court decorum. _____

Q. 87. If a court is located near the police department, what are some steps that you can take to maintain a clear separation between the court and law enforcement? _____

CONCLUSION

After reading this guide, clerks should have a clearer picture of the judicial system and their role in it. Although the judge is responsible for guiding the court, it is the clerk who manages the day-to-day operations of the court, ensuring that the ministerial and administrative duties are properly performed. Because clerks see and assist more defendants than do judges, they must understand the differences between judicial and ministerial duties so that they do not overstep the boundaries of their authority.

The clerk serves as a buffer between defendants and the judge. Many defendants do not understand that the judge may not hear their side of the story unless it is at trial or unless the defendant wants to plead guilty or nolo contendere. To help these defendants understand court procedures, clerks should be good communicators and understand court processes and procedures to be able to properly explain them to defendants.

Many Texas cities require the judge to also be the clerk for the court. These judges who do not have a clerk in the court must themselves perform the ministerial and administrative work typical of clerks. When a judge does not have a clerk, the judge sees all of the defendants who come to the court facility. Without the buffer of a clerk, the proper handling of defendants who do not understand the ethical standards required of judges requires good communication skills. Judges acting as the clerk must also be concerned with the potential appearance of impropriety when preparing complaints based off of a citation, coordinating peace officers' filing of tickets and the officers' trial appearances, or providing the prosecutor information needed to prosecute cases. The judge who does not have a clerk must understand the requirements of state reporting, as

there may be financial consequences if not properly and timely prepared and submitted. The judge must also have knowledge of financial management in order to properly handle money received by the court.

Although these functions are necessary to the operation of the court, a judge performing them must do so very cautiously, remembering the *Code of Judicial Conduct's* requirement to abstain from the appearance of impropriety.

There are other Texas cities that choose to appoint the clerk as an alternate or associate judge. Remember that although Texas cities may distinguish a judge as an alternate or associate judge, or a part-time judge, a judge is still a judge 24 hours a day for purposes of following the canons in the *Code of Judicial Conduct*. Clerks who are appointed as a judge must be mindful of the potential appearance of impropriety when preparing complaints, dealing with defendants on the telephone or at the window, or at any proceedings before a plea has been entered.

**APPENDIX A:
STATEMENT OF OFFICER AND OATH OF OFFICE**

It is imperative that each appointed or elected official swear to and sign a statement of officer and an oath of office upon each appointment or election and upon reappointment or reelection.

Anti-Bribery Statement of Officer

Before assuming the duties of office, all appointed or elected judges and clerks of the court must first file a sworn statement of officer with the records of the office. Usually, the city secretary maintains these records.

Appointed judges and clerks of the court must swear to and sign the following statement:

I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money, or thing of value, or promised any public office or employment, as a reward to secure my appointment or confirmation thereof, so help me God.

Elected judges and clerks of the court must swear to and sign the following statement:

I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected, so help me God.

Oath of Office

After filing one of the above statements, the official, whether elected or appointed, must swear to the following oath of office:

I, _____, do solemnly swear (or affirm) that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.

APPENDIX B: WHOSE JOB IS IT?

Activity	Magistrate	Judge	Clerk	Prosecutor	Other
Issue search warrants	x				
Issue arrest warrants	x	x			
Review probable cause for Class A & B misdemeanor & felony warrants	x				
Administer oath to affiant swearing to complaint – A & B misdemeanors & felonies					x District and County Attorney
Administer magistrate warnings	x				
Issue MOEPs	x				
Set bail	x	x			x Peace Officer (in limited circumstances)
Determine sufficiency of bail	x	x			
Issue citation					x Peace Officer
File sworn complaint (charging instrument)			x	x	x Any person
Approve charges and dictate language in charging instrument				x	
Prepare complaint (charging instrument)			x	x	
Administer oath to affiant swearing to complaint in municipal court		x	x	x	x City Secretary, City and Deputy City Attorney
Request summons				x	
Prepare summons			x		
Issue summons	x	x			
Issue capias		x			
Maintain docket		x	x		
Formally accept plea from defendant	x	x			
Enter not guilty plea when defendant fails to enter plea		x			

Plea bargaining				x	x Defendant
Accept plea bargain		x			
Set fines		x			
Determine how fine is paid		x			
Prepare judgment		x	x		
Sign judgment		x			
Process DSC request		x	x		
Grant DSC		x			
Grant deferred		x			
Process paperwork for deferred		x	x		
Set case for show cause hearing		x	x		
Grant continuances		x			
Rule on motions		x			
Request subpoenas				x	x Defendant
Issue subpoenas		x	x		
Serve subpoenas					x Peace Officer or a Non-party at least 18yoa
Deliberate on evidence for determination of guilt		x			x Jurors
Issue writ of venire		x			
Summon prospective jurors		x	x		
Administer oath to venire and/or jury panel		x	x		x Bailliff
Grant extensions for payment		x			
Grant community service		x			
Grant credit for time served		x			
Waive fines/costs		x			
Dismiss cases		x		x	

Prepare capias pro fine		x	x		
Issue capias pro fine		x			
Execute warrant, capias, summons, capias pro fine					x Peace Officer
Prepare file for appellate court		x	x		

ANSWERS TO QUESTIONS

PART 1

- Q. 1. False
- Q. 2. False
- Q. 3. False
- Q. 4. True
- Q. 5. False
- Q. 6. Every time appointment, election, reappointment, or reelection occurs; with each new term of office.
- Q. 7. The statement of the officer.

PART 2

- Q. 8. In a general-law city, the mayor is the *ex-officio* judge of the municipal court. The mayor continues as municipal judge during his or her term as mayor unless the municipality, by ordinance, authorizes the election of a judge or provides for the appointment and qualifications of a judge by ordinance. After the ordinance is adopted by the city council, the mayor ceases to act in the capacity of a judge, even if the position of judge is vacant.
- Q. 9. The city's charter.
- Q. 10. If a municipal judge of a general-law city is temporarily unable to act, the governing body may appoint one or more persons meeting the qualifications for the position to sit for the regular municipal judge. The appointee has all powers and duties of the office and is entitled to compensation.
- Q. 11. A question of law is an issue involving application or interpretation of a law.
- Q. 12. A question of fact is an issue involving resolution of a factual dispute.
- Q. 13. Judicial discretion is the exercise of judicial judgment. Judges' discretion to make decisions must be guided by law and be based on facts and is the power to determine what, under existing circumstances, is right or proper.
- Q. 14. When a law prescribes a certain way to perform a certain action, the judge has no discretion.
- Q. 15. Judges can delegate a ministerial duty to the clerk.
- Q. 16. False.
- Q. 17. False.
- Q. 18. False.
- Q. 19. True.
- Q. 20. False.
- Q. 21. False.
- Q. 22. False.
- Q. 23. True.

- Q. 24. True.
- Q. 25. False.
- Q. 26. True.
- Q. 27. False.
- Q. 28. False.
- Q. 29. False.
- Q. 30. False.
- Q. 31. False.
- Q. 32. False.
- Q. 33. True.
- Q. 34. True.
- Q. 35. True.
- Q. 36. False.
- Q. 37. True.
- Q. 38. False.
- Q. 39. True.
- Q. 40. False.
- Q. 41. True.
- Q. 42. False.
- Q. 43. False. (Only a prosecutor may request a case be dismissed.)
- Q. 44. False.
- Q. 45. False.
- Q. 46. False.
- Q. 47. Contempt power.
- Q. 48. Family Code.

PART 3

- Q. 49. A general-law city is one with a population under 5,000 or with a population of more than 5,000 that does not have a home-rule charter and is, therefore, governed by the general laws of the state.
- Q. 50. In general-law cities, the municipal court clerk may be either appointed or elected.
- Q. 51. A home-rule city is one that has a charter that governs it, and, therefore has a measure of self-government.
- Q. 52. In a home-rule city, the municipal court clerk may be hired, appointed, or elected.
- Q. 53. False.
- Q. 54. True.
- Q. 55. False.
- Q. 56. True.

- Q. 57. False.
- Q. 58. Answer:
- keep minutes of the court proceedings;
 - issue (prepare) process; and
 - generally perform the duties for the municipal court that a county clerk performs for a county court.
- Q. 59. The clerk must get permission from the State Library and Archives Commission to destroy the records.
- Q. 60. True.
- Q. 61. True.
- Q. 62. True.
- Q. 63. Municipal court clerks of courts of records are required to keep a record of each case in which a person is charged with a violation of law regulating the operation of vehicles on highways.
- Q. 64. In non-record courts, judges and magistrates are required to keep records of traffic offenses. Keeping these types of records is a ministerial duty that judges may delegate to the clerk.
- Q. 65. Municipal court clerks, judges, and magistrates are required to report convictions and bond forfeitures of traffic offense to the Department of Public Safety.
- Q. 66. The clerk is required to deliver a copy of the permanent exemption to the county tax assessor/collector.
- Q. 67. The clerk is required to randomly select jurors by computer or another process of random selection and shall write or print the names in the order selected on the jury list. The clerk shall deliver a copy of the list to the prosecutor and to the defendant or his or her attorney.
- Q. 68. The clerk has a mandatory ministerial duty to forward the appeal to the appellate court.
- Q. 69. When a forfeiture has been declared, the judge or clerk shall docket the case upon the scire facias (a special docket for bond forfeiture) or upon the civil docket.
- Q. 70. The clerk is required to send a copy of the order to the victim.
- Q. 71. The clerk or judge must immediately notify the Texas Department of Public Safety.
- Q. 72. Keep a copy of the warrants and supporting affidavits on file for public viewing.
- Q. 73. Answer may vary from city to city.
- Q. 74. A clerk may summon prospective jurors when the judge issues a writ commanding the clerk to summon a list of citizens from which six qualified persons shall be selected.
- Q. 75. The clerk may administer the oath to prospective juror for voir dire when directed to do so by the judge.
- Q. 76. Answer:
- the style and file number of each criminal action;
 - the nature of the offense charged;
 - the plea offered by the defendant and the date the plea was entered;

- the date the warrant, if any, was issued and the return made thereon;
- the date the examination of trial was held, and if a trial was held, whether it was by jury or by the justice or judge;
- the verdict of the jury, if any, and the date of the verdict;
- the judgment and sentence of the court, and the date each was given;
- the motion for new trial, if any, and the decision thereon; and
- whether an appeal was taken and the date of that action.

- Q. 77. Since judges are required to keep a docket and there is no discretion as to the information required to be maintained, judges may delegate this duty to the clerk.
- Q. 78. A municipal court clerk is required to notify in writing the aggrieved person against whom the purported judgment, act, order, directive, or oral process is rendered. If the document or instrument purports to create a lien on real or personal property, the clerk is required to notify in writing the person named in the document at his or her stated or last known address. The clerk is required to provide this written notice not later than the second business day after the date that the document or instrument is offered or submitted for filing. The clerk is also required to post a warning sign with letters at least one inch in height that is clearly visible to the general public near the clerk's office stating: IT IS A CRIME TO INTENTIONALLY OR KNOWINGLY FILE A FRAUDULENT COURT DOCUMENT OR INSTRUMENT.
- Q. 79. True. This authority is found in Art. 45.019, C.C.P.
- Q. 80. True.
- Q. 81. True.
- Q. 82. Municipal court clerks have the authority to issue subpoenas because there is no discretion in issuing a subpoena. Defendants have a right to some type of compulsory process compelling the attendance of witnesses at a trial.
- Q. 83. The statute requiring the seal does not provide the wording of the seal.
- Q. 84. "Municipal Court of/in _____, Texas."
- Q. 85. The purpose of the court seal is to authenticate the acts of the judge and clerk.

PART 4

- Q. 86. Decorum includes observing correct judicial procedures and customs, as well as exercising courtesy before everyone who appears in court. Starting on time, allowing time to permit full hearings, being courteous to all who appear in court, and being firm are examples. *(Answer varies from clerk to clerk)*
- Q. 87. If possible, have the municipal court in a separate public building or in a separate portion of city hall. Have separate entrances into the court and into the police department. The court should not be located within the confines of the police department. *(Answer varies from clerk to clerk)*