

Whose Job Is It?

More importantly, who can legitimately do it?

Types of Duties

ADMIT ONE

- **Law enforcement**

It is the duty of every peace officer to preserve the peace within the officer's jurisdiction... [by the use of] all lawful means (Art. 2.13, CCP)

- Where authorized, to interfere (and arrest offenders) without warrant to prevent or suppress crime;
- Execute all lawful process issued to the officer by any magistrate or court;
- Give notice to magistrate of all offenses committed within his jurisdiction where he has probable cause

Types of Duties

- **Magistrate**

It is the duty of every magistrate:

- to preserve the peace within his jurisdiction by the use of all lawful means
- to issue all process intended to aid in preventing and suppressing crime
- to cause the arrest of offenders by the use of lawful means in order that they may be brought to punishment (Art. 2.10, CCP).

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

- **Judicial duties**

Require:

An exercise of judgment

A question of law or fact

A choice of alternatives



Types of Duties

- **Ministerial duties**

- Nothing is left to discretion

- Imposed by law and generally administrative in nature



Standing Orders

What are they?

- Orders from the judge directing court staff on how to perform a duty
- Must be in writing
- Signed by the judge
- Must be specific
- Must remove all discretion from the situation

Ministerial Duty: **Docketing**

Article 45.017, CCP

- The judge of each court, or if directed by the judge, the clerk of the court, shall keep a docket containing the following information...

- The information in the docket may be processed and stored by the use of electronic data processing equipment, at the discretion of the municipal court judge.

A delegable duty

The judge abdicated official duties by relinquishing control of the court's criminal docket to the county attorney, whose office was unable to handle the volume of work due to staff shortages.

-2008 Private Warning and Order of Additional Education of a County Judge

Danger!

Judicial Duty: **Granting continuances**

Good use for standing orders

- Chapter 29, CCP
- Upon motion to the court (ruling on motions is a judicial duty)

JUDGE'S STANDING ORDER NO. 2
COURT SETTINGS

DOCKET SETTINGS

IT IS ORDERED that a Defendant or his attorney, who appears at the Court Clerk's Window anytime prior to "Pending Warrant Status," may, without the requirement of posting a bond, obtain a setting on the Court's "Not Guilty" docket, the "Pre-Trial" (Jury) docket, or the "Attorney Plea" docket, if applicable.

IT IS ORDERED that if a Defendant fails to appear for a properly noticed Court date, he must post a bail bond (cash, surety, or attorney) to obtain another Court Date. If a Judgment *Nisi* is entered against the Defendant, any subsequent bail bond shall be posted in cash, unless expressly approved by the Court.

CONTINUANCES

IT IS ORDERED that a motion for continuance must be in writing and filed with the Court three (3) calendar days prior to the Court setting in order to continue a case on the Court's docket. Deviations from this procedure must be approved by the Court.

Any party may obtain one (1) continuance without agreement of the opposing party and without the requirement of posting a bond. Any Motion for Continuance requested at the Court Clerk's Window must include a corresponding order for the Court's signature. Additional resets must be approved by the Court.

SIGNED AND ENTERED on this the 31st day of December, 2008.

Brian S. Holman
Presiding Judge

Judicial Duty: **Accepting pleas**

What do the statutes say?

- A plea of guilty or no contest may be made either by defendant or counsel in open court under Article 27.14
- But in a fine-only case, in lieu of above, defendant may mail or deliver in person to the court a plea of guilty or no contest
- A plea of not guilty may be made orally by the defendant or counsel in open court under Article 27.16
- But in a fine-only case, in lieu of above, defendant may mail to the court a plea of not guilty

Judicial Duty: **Accepting pleas**

Definition of “accept”

- To receive something with approval and intention to keep it.

Judicial Duty: **Accepting pleas**

Is it delegable?

- Clerks can accept the plea and process the paperwork
- But think through what happens when the plea is accepted...
- Only a judge can formally accept a plea
- Only a judge can enter a plea of not guilty

Judicial Duty: **Accepting payments**

What do the statutes say?

- Article 27.14(c) provides that payment of a fine or an amount **ACCEPTED** by the court constitutes a finding of guilty in open court as though a plea of no contest had been entered and jury trial waived

Who can accept?

- Only the judge has the discretion to decide whether payment offered satisfies the judgment

Judicial Duty: **Setting fines**

Article 45.041, CCP

- The judgment and sentence shall be that the defendant pay the amount of the fine and costs to the State.

- Legislature (or council) sets the range, while the judge sets the amount within the range

Judicial Duty: **Accepting pleas / payments**

So, is it delegable?

The judge relinquished his judicial duties to officers in the police department and allowed them to accept pleas and collect fines and court costs from criminal defendants arrested on Class C misdemeanor or "sight" offenses and/or arrested on outstanding warrants and capiases.

DANGER!
-2009 Private Admission of a Municipal Court Judge

**JUDGE'S STANDING ORDER NO. 1
FINES**

IT IS ORDERED that the fines as set forth in the attached Fine Schedule shall be assessed upon a finding of guilty for the stated violations unless individually altered by the Court.

LATE APPEARANCE

IT IS FURTHER ORDERED that if the Defendant violates his promise to appear by the date indicated on the citation the window fine shall increase by \$75, or to the maximum fine allowed by law (whichever amount is lowest) as of the first business day following the appearance date. This penalty fine may be waived only by the Court.

The window fine will remain in effect until a warrant is signed by the Court.

SIGNED AND ENTERED on the 31st day of December, 2008.

Brian S. Holman
Presiding Judge

**JUDGE'S STANDING ORDER NO. 27
PAYMENT OF FINES AT WINDOW**

IT IS ORDERED that a Clerk may accept payment of a fine or fee at the Clerk's Window. However, if the case has not been adjudicated (plea entered or guilt/innocence determined by the court), a Clerk may accept payment of a fine or fee from the Defendant only. The Clerk shall verify the identity of the person paying the fine or fee before acceptance.

SIGNED AND ENTERED on this the 9th day of January, 2009.

Brian S. Holman
Presiding Judge

**JUDGE'S STANDING ORDER NO. 13
PAYMENTS RECEIVED BY MAIL**

IT IS ORDERED that a Clerk may accept payment for a fine or fee in the form of a check, cash or money order received by mail in amounts up to Ten (\$10.00) dollars less than the amount of the judgment but in case shall the amount be less than the lawfully established minimum fine. If the amount received is more than Ten (\$10.00) dollars deficient, the payment shall be deemed *untimely* and returned to the Defendant with a request for the correct amount of payment. The Defendant shall be liable for any additional fees resulting from the untimely receipt of the fines or fees.

SIGNED AND ENTERED on this the 31st day of December, 2008.

Brian S. Holman
Presiding Judge

Judicial Duty: Accepting pleas	
Specific circumstances	
<ul style="list-style-type: none">- If defendant is a child: Article 45.0215 says the JUDGE must take the defendant's plea in open court- If defendant is a minor charged with an ABC offense, plea of guilty must be made in open court before the JUDGE (Section 106.10, ABC)	<p style="text-align: center;"><i>The judge failed to comply with the law and failed to maintain professional competence in the law when she allowed her court staff and city prosecutors to "take" pleas from juvenile defendants in her absence.</i></p> <p style="text-align: center;"><small>-2011 Private Admonition of a Former Municipal Court Judge</small></p> 

Judicial Duty: Entering judgment

Article 45.041, CCP

- The JUDGE may direct the defendant to pay...
- All judgments, sentences, and final orders of the judge shall be rendered in open court

The judge failed to enter a final written order or judgment in Complainant's case.

-2011 Private Order of Additional Education of a Municipal Court Judge

Danger

Why is judgment important?

**JUDGE'S STANDING ORDER NO. 9
EXTENSIONS TO PAY FINES**

IT IS ORDERED that a Defendant who appears at the Court Clerk's window to plead "guilty" or "no contest" may receive an extension to pay the fine of up to 14 days from the date of the required appearance date. The Defendant shall complete and sign the appropriate extension form.

IT IS ORDERED that the Clerks may process a request for an extension to pay a fine unless a warrant has been issued for the Defendant by the Court.

SIGNED AND ENTERED on this the 18th day of September, 2008.

Brian S. Holman
Presiding Judge

Judicial Duty: Entering Judgment

Also entails:

- **Granting payment plans**
 - Article 45.041
- **Granting community service**
 - Article 45.049
- **Waiving fines/costs**
 - Article 45.0491
- **Determining indigency**
 - All of the above
- **Granting time served**
 - Articles 45.041, 45.048

Where could we use a standing order?

**JUDGE'S STANDING ORDER NO. 20
PAYMENT PLANS**

IT IS ORDERED that a Clerk may process a request for a payment plan from a person who appears at the Clerk's window claiming an inability to pay their fine in full under the following guidelines:

- 1) the defendant completes or updates a financial information affidavit at the time of the payment plan request;
- 2) the defendant has not previously defaulted on a payment plan ordered by the court;
- 3) no warrant for the arrest of the defendant is pending at the time of the request.

If the defendant complies with these conditions, the clerk may proceed to process either of two (2) installment payment plan options elected by the defendant:

Option 1: 2 Week Extension to Pay in Full

- 1) the defendant pays a payment of \$50 at the time of the initial payment plan request;
- 2) the balance of the fine shall be paid in full within 2 weeks of the request;
- 3) the clerk shall not process an additional extension to pay the fine.

The clerk shall advise the defendant that failure to comply with the payment plan will result in:

- a) an additional \$25.00 time-payment fee;
- b) no further extensions to pay the fine;
- c) an arrest warrant or Capias for failure to pay the fine;
- d) a driver's license suspension order issued to the DPS;
- e) referral of the case to a collection agency (increase of 30% to the fine).

Option 2: Limited Time Payments

- 1) the defendant pays a payment of \$50 at the time of the initial payment plan request;
- 2) a \$25.00 time-payment fee will be added to each pending case;
- 3) the defendant shall complete the Financial Information (short form) which will be verified by a clerk. False or misleading information on the document will be grounds for termination of the payment plan and acceleration of the entire balance of all fines;
- 4) no additional extensions to pay the fine(s) shall be granted by the clerk;
- 5) the clerk shall prepare the payment according to the following schedule:

total owed:	\$0 up to \$500	\$75 - \$150 / month
total owed:	\$501 up to \$1,000	\$150 - \$199 / month
total owed:	\$1,000 or more	\$200 / month

The clerk shall advise the defendant that failure to comply with the payment plan will result in:

- f) an additional \$25.00 time-payment fee;
- g) no further extensions to pay the fine;
- h) an arrest warrant or Capias for failure to pay the fine;
- i) a driver's license suspension order issued to the DPS;
- j) referral of the case to a collection agency (increase of 30% to the fine).

Option 3: Indigence Hearing

All persons who allege an inability to pay the fine(s) in accordance with Options 1 or 2 above shall be ordered to appear before the court to determine the indigency of the defendant. The clerk shall provide the defendant with a "Financial Information Affidavit" and advise the defendant to bring to court sufficient documentation to establish indigency and inability to discharge the fine through a payment plan. The information shall include:

- a) past 2 years Federal Income Tax returns;
- b) past 3 banks statements (3 most recent months);
- c) past 3 pay stubs;
- d) proof of governmental financial assistance;
- e) verification of disability or worker's compensation benefits, if applicable;
- f) notice of unemployment insurance disposition and benefit amount, if applicable;
- g) address & telephone of references who can verify financial information.

The clerk shall advise the defendant that failure to comply with the payment plan will result in:

- a) an additional \$25.00 time-payment fee;
- b) no further extensions to pay the fine;
- c) an arrest warrant or Capias for failure to pay the fine;
- d) a driver's license suspension order issued to the DPS;
- e) referral of the case to a collection agency (increase of 30% to the fine).

A Clerk may use the system-generated form or the standard two-part form to create the payment plan so long as the defendant signs the form and is advised of and agrees to appear in the event of non-compliance.

SIGNED and ENTERED this 24th day of November 2008.

Brian S. Holman
Presiding Judge

<p>Judicial Duty: Granting deferred</p>	
<p>Article 45.051, CCP</p> <ul style="list-style-type: none"> • The judge may defer further proceedings... • Defendant can request, clerk can process, but only the JUDGE can grant 	<ul style="list-style-type: none"> • Great use of standing orders – to allow clerk to process case without waiting on judicial determination

**JUDGE’S STANDING ORDER NO. 4
DEFERRED DISPOSITION**

IT IS ORDERED that the Court Clerks may process requests for Deferred Disposition (“Deferred”) from a Defendant, or his attorney, at the Court Clerk’s Window and may complete the paperwork for the Court’s signature if the Defendant meets the eligibility requirements set forth below. Defendants not meeting said eligibility requirements may present their request for Deferred to the Court by setting the case on the Court’s “No Contest” or “Attorney Plea” docket.

MOVING VIOLATIONS:

A Defendant is eligible for Deferred Disposition “at the Clerk’s Window” for a moving violation if:

- 1) the Defendant shows proof of valid Driver’s License (not restricted to Texas D.L.);
- 2) the Defendant pays in full at the time of the request all court costs and the special expense fee (which is equal to the window fine, and penalty fine if applicable);
- 3) the Defendant is at least 25 years of age, or if less than 25 years of age agrees to complete a driving safety course approved under Chapter 1001, Texas Education Code;
- 4) the Defendant has not been granted Deferred in Lewisville within twelve (12) months of the date of the request; and
- 5) the Defendant is not currently on Deferred in any other jurisdiction.

IT IS ORDERED that the deferral period shall be 90 days, unless otherwise indicated by these orders.

A Defendant is **not** eligible for Deferred Disposition “at the Clerk’s Window” for a moving violation if:

- 1) the driver is the holder of a **Commercial Driver's License**;
- 2) the offense occurred in a **construction or maintenance work zone when workers are present**;
- 3) the Defendant was involved in an **accident resulting in property damage or personal injury**;
- 4) the offense involves **passing a school bus**;
- 5) the offense involves failing to obey school crossing guard;
- 6) the offense involves speeding in excess of **25 mph or more over** the posted speed limit or in excess of **80 mph**; or
- 7) the case is in "Warrant Status" as defined by the Court's Standing Orders.

NON-MOVING VIOLATIONS:

A Defendant is eligible for Deferred Disposition "at the Court Clerk's Window" for non-moving violations if:

- 1) the Defendant pays in full at the time of the request all court costs and the special expense fee (which is equal to the window fine, and penalty fine if applicable);
- 2) the Defendant has not been granted Deferred in Lewisville within twelve (12) months of the date of application; and
- 3) the Defendant is currently on Deferred in another jurisdiction.

IT IS ORDERED that the deferral period shall be 90 days, unless otherwise indicated by these orders.

A Defendant is **not** eligible for Deferred Disposition "at the Court Clerk's Window" for non-moving violations if:

- 1) the offense involves a violation of the Alcohol Beverage Code;
- 2) the offense is for Driving Under the Influence pursuant to 106.041 of the Texas Alcoholic Beverage Code;
- 3) the offense involves violations of Chapter 161 of the Texas Health and Safety Code (Tobacco violations); or
- 4) the offense involves personal complaints;
- 5) the case is in "Warrant Status" as defined by the Court's Standing Orders.

FAIL TO MAINTAIN FINANCIAL RESPONSIBILITY:

A Defendant is eligible for Deferred Disposition “at the Court Clerk’s Window” for the offense of Failing to Maintain Financial Responsibility if:

- 1) the Defendant pays in full at the time of the request all court costs and the special expense fee (which is equal to the window fine, and penalty fine if applicable);
- 2) the Defendant has not been granted Deferred in Lewisville within twelve (12) months of the date of application; and
- 3) the Defendant is not currently on Deferred in another jurisdiction; and
- 4) the Defendant presents proof of Financial Responsibility that is valid on the day of the request, maintains financial responsibility for the entire deferral period of 180 days and provides proof of financial responsibility to the Court at the end of the period, either in person or by mail.

IT IS ORDERED that a penalty fine in the amount of Seventy Five (\$75.00) dollars, or up to the maximum amount of the fine, whichever is less, shall be added to the Special Expense Fee if the Defendant appears at the Court Clerk’s Window after the due date indicated on the Defendant’s citation.

If the Defendant fails to comply with the terms of probation, the Clerk shall summon the Defendant to court to show cause for such failure. If the Defendant fails to appear, a final judgment shall be prepared for the Court’s signature.

SIGNED AND ENTERED on this the 18th day of September, 2008.

Brian S. Holman
Presiding Judge

Judicial Duty: Granting DSC	
<p>Article 45.0511(c), CCP</p> <ul style="list-style-type: none"> • Some are entitled to take a DSC – if the appropriate offense, proof of insurance, valid DL, has not taken one in the past 12 months, and makes a timely request • Clerk can process and judge shall enter judgment and defer imposition 	<p>Article 45.0511(d), CCP</p> <ul style="list-style-type: none"> • If defendant did not timely request or has taken one within the past 12 months, DSC is discretionary • The COURT may grant a request to take a DSC...

JUDGE’S STANDING ORDER NO. 10
DRIVING SAFETY COURSE

IT IS ORDERED that a Court Clerk may accept a request for the Driving safety Course (DSC) at the Clerk’s Window if the following requirements are met:

1. The Defendant requests DSC no later than the “appearance date” stated on the citation.
2. The Defendant files with the court a signed an affidavit complying with all eligibility requirements for DSC as set forth in Sec. 45.0511(c)(3) of the Texas Code of Criminal Procedure.
3. The Defendant provides proof of financial responsibility, pursuant to the Texas Transportation Code, valid and in force as of the date the Defendant “signs up” for DSC with the Court. Proof must conform to Standing Order No. 6.
4. The Defendant presents a valid Texas Driver’s License or permit.
5. The Defendant pays the DSC fee instanter.

IT IS ORDERED that a Clerk may accept proof of completion of a Driving Safety Course (DSC) for dismissal of the case at the Clerk’s window or by mail under the following circumstances:

1. The Defendant presents a certificate indicating timely completion of the DSC and a driving record certified by the Texas Department of Public Safety (DPS) issued after the offense date.
2. The driving record presented by the Defendant indicates the Defendant has not completed a driving safety course for the purpose of dismissing a moving violation citation within the twelve (12) months preceding the date of the citation.

3. The course certificate indicates “court copy”, is signed by the Defendant and contains with no alterations, modifications and/or erasures.

IT IS ORDERED that upon presentation and verification of completion, the Clerks shall present the case to the Court for dismissal.

If the Defendant fails to provide evidence of successful completion of the DSC within the time period allowed, the Clerk shall summon the Defendant to court to show cause why such evidence was not submitted timely. If the Defendant fails to appear, a final judgment shall be prepared for the Court’s signature.

No time payment fee shall not be assessed until the 31st day after a final judgment has been entered by the Court.

IT IS FURTHER ORDERED that if Defendant presents a uniform course completion certificate for DSC that indicates the course was completed after the citation was issued but prior to the date the court granted the DSC, the Clerk shall accept the certificate and process the case as ordered above.

SIGNED AND ENTERED on this the 31st of December, 2008.

Brian S. Holman
Presiding Judge

Judicial Duty: **Dismissing cases**

Judge's authority is limited

- **Lack of jurisdiction**

- Subject matter
- Territorial

- **Operation of law**

- Deferred disposition
- Driving safety course
- Teen court
- Chemically dependent person
- Tobacco awareness course
- Failure to attend school – proof of graduation/compliance

- **Compliance dismissals**

- Expired registration, inspection, equipment violation, etc.

- **Proof of insurance**

- **Proof of valid DL**

No motion needed

Judicial Duty: **Dismissing cases**

Prosecutorial discretion

- **Interest of justice**

- **Defense to prosecution that cannot be overcome**

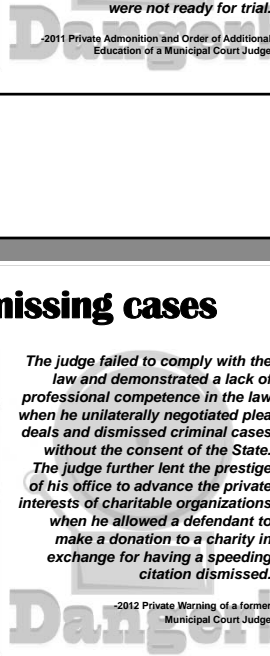
- **Non-prosecutable**

- Officer unavailable
- Length of time that has passed

- **Plea-bargaining**

The judge failed to comply with the law, engaged in improper ex parte communication with a litigant, and denied a party the right to be heard according to law when he: (1) communicated and plea bargained with a defendant outside the presence of the State; (2) dismissed several of the defendant's cases without input or consent from the State; and (3) erroneously noted on the file jackets of the dismissed cases that the State and its witness were not ready for trial.

-2011 Private Admission and Order of Additional Education of a Municipal Court Judge



Judicial Duty: **Dismissing cases**

- **Article 32.02:** The attorney representing the State may, by permission of the court, dismiss a criminal action at any time upon filing a written statement with the papers in the case setting out his reasons for such dismissal... No case shall be dismissed without the consent of the presiding judge.

The judge failed to comply with the law and demonstrated a lack of professional competence in the law when he unilaterally negotiated plea deals and dismissed criminal cases without the consent of the State. The judge further lent the prestige of his office to advance the private interests of charitable organizations when he allowed a defendant to make a donation to a charity in exchange for having a speeding citation dismissed.

-2012 Private Warning of a former Municipal Court Judge



**JUDGE'S STANDING ORDER NO. 5
COMPLIANCE DISMISSALS**

IT IS ORDERED that a Clerk may accept for processing and dismissal, after proof of compliance, the following cases:

1. Display Expired License Plates (registration) (T.C. 502.407(b))
2. Display Expired Inspection Certificate (T.C. 548.605(b))
3. Expired Texas Driver's License (T.C. 521.026)
4. Fail to Display Driver's License (T.C. 521.025(d))
5. Fail to Change Address/Name on Driver's License (T.C. 521.054)
6. Violation of Driver's License Restriction (T.C. 521.221)

The Clerk shall make a copy for the file of the document(s) establishing proof of compliance and present the file to the Court for dismissal of the citation.

ACCEPTABLE PROOF OF COMPLIANCE AND DISMISSAL PROCEDURES

The following are acceptable means of proving remediation and/or compliance and the procedures for processing the case for dismissal:

Expired License Plate (Registration)

1. The standard form generated by a County Tax Assessor's office stamped by the County Tax Assessor's office indicating the date and amount of payment; or
2. The new registration receipt form generated by the County Tax Assessor's office stamped by the County Tax Assessor indicating the date and amount of payment;
3. The date of compliance is not more than 20 working days after the date of offense.
4. The Clerk shall collect a fee of \$20.00 before the case may be processed for dismissal.

Expired Inspection Certificate

1. The standard Texas Vehicle Inspection Report showing the vehicle "passed" inspection, including the license plate number, make and model, the date inspected, and the amount paid, or other document evidencing compliance with the state inspection;
2. The inspection certificate has not been expired for more than 60 days;
3. The date of compliance is not more than 20 working days after the date of offense;
4. The Clerk shall collect a fee of \$20.00 before the case may be processed for dismissal.

Expired Driver's License

1. The temporary license issued by the Department of Public Safety indicating renewal of the license and the date renewed;

2. The date of compliance is not more than 20 working days after the date of offense;
3. The Clerk shall collect a fee of \$20.00 before the case may be processed for dismissal.

Fail to Display Driver's License

1. A valid Texas driver's license that was valid at the time of the offense;
2. No fee shall be collected for dismissal of this charge.

Fail to Change Address/Name on Driver's License

1. A valid Texas driver's license that indicates the name and address of the Defendant has been corrected;
2. A receipt issued by the Department of Public Safety (DPS) indicating that the change was made within 20 working days after date of the offense;
3. The Clerk shall collect a fee of \$20.00 before the case may be processed for dismissal.

Violation of Driver's License Restriction

1. A valid Texas driver's license without the restriction or endorsement;
2. A receipt issued by the (DPS) dated as of or before the defendant's first court appearance;
3. The Clerk shall collect a fee of \$10.00 before the case may be processed for dismissal.

In the event the proof does not comply with the above requirements, at the request of the Defendant, the Clerk may set the case on the "No Contest" docket for hearing before the Court.

SIGNED AND ENTERED on this the 18th day of September, 2008.

Brian S. Holman
Presiding Judge

**JUDGE'S STANDING ORDER NO. 6
DISMISSAL OF FINANCIAL RESPONSIBILITY VIOLATIONS**

IT IS ORDERED that any time prior to the date of hearing for a citation of "Fail to Maintain Financial Responsibility" a Clerk may accept proof of financial responsibility for dismissal if it complies with the following requirements for acceptable proof.

IT IS ORDERED that the status of the violator's driver's license or right to obtain a driver's license shall not be considered when determining eligibility for dismissal.

ACCEPTABLE PROOF

Any typewritten, company generated "Owner's Policy" of insurance coverage covering the day the citation was issued as long as the proof contains the name of the defendant or the make and model of the vehicle the defendant was driving. (Minimum coverage as of April 1, 2008 is 25/50/25. Effective January 1, 2011, the minimum liability coverage increases to 30/60/25)

Premium notices, payment receipts and/or handwritten documents are not "acceptable proof" of financial responsibility.

Fleet policies may be accepted by a Clerk for dismissal if the defendant presents valid proof consistent with the criteria above and indicia of authorization to drive the covered vehicle.

All documents presented to the Court as proof of Financial Responsibility shall be submitted for verification prior to dismissal, unless directed otherwise by the Court.

IT IS FURTHER ORDERED that a Clerk shall set any cases regarding the sufficiency or validity of proof of financial responsibility for hearing before the Court.

If a Defendant presents acceptable proof for a case for which a warrant has been issued, a Clerk shall attempt immediately to verify the proof. **IT IS ORDERED** that if a Clerk cannot verify financial responsibility for the defendant or the vehicle on the date the citation was issued, the Defendant shall be required to post an appearance bond in the amount of the window fine and any additional fees and/or fines that may be assessed.

SIGNED AND ENTERED on this the 31st day of December, 2008.

Brian S. Holman
Presiding Judge

JUDGE'S STANDING ORDER NO. 19 FAIL TO DISPLAY DRIVER'S LICENSE

IT IS ORDERED that a charge of Fail to Display Driver's License pursuant to section 521.025 of the Texas Transportation Code shall be dismissed if the Defendant presents to a Clerk:

1. a valid Driver's License;
2. issued to the Defendant before the time and date of the offense; and
3. appropriate for the type of vehicle being operated.

IT IS FURTHER ORDERED that a Clerk shall obtain a copy of the Defendant's driver's license and retain said copy in the file, complete the dismissal section of the judgment by indicating the date of dismissal as the date the Defendant appeared at the clerk's window and present the file to the judge for dismissal.

This order shall apply to any "Fail to Display Driver's License" case where proof of a driver's license has been presented to a Clerk consistent with the above policy, regardless of the date this order is signed.

No fee for the dismissal of a charge of "Fail to Display a Driver's License" shall be assessed or collected.

SIGNED and ENTERED this 18th day of September, 2008.

Brian S. Holman
Presiding Judge

**JUDGE'S STANDING ORDER NO. 24
DISMISSAL OF UNADJUDICATED CASES AND UNEXECUTED ARREST WARRANTS**

IT IS ORDERED that, pursuant to the Standing Motion of the City Prosecutor, all unadjudicated cases filed with the Lewisville Municipal Court or the Lewisville Court of Record No. 1 more than five (5) years from the date of offense shall be and are hereby **DISMISSED**.

IT IS FURTHER ORDERED that all unexecuted *Alias Capias* warrants for unadjudicated cases issued more than five (5) years from the date of this order shall be and are hereby **DISMISSED**.

IT IS FURTHER ORDERED that during the month of June of any year, the Clerk of the Court of the City of Lewisville shall prepare or cause to be prepared a list of unadjudicated cases pending with the Court for more than five (5) years from the date of offense, said list to be incorporated by reference into the dismissal order for the relevant period, for dismissal pursuant to this Standing Order.

IT IS FURTHER ORDERED that during the month of June of any year, the Clerk of the Court of the City of Lewisville shall prepare or cause to be prepared a list of unexecuted warrants issued by the Court more than five (5) years from the date of issuance, said list to be incorporated by reference into the dismissal order for the relevant period, for dismissal pursuant to this Standing Order.

SIGNED AND ENTERED on this the 11^h day of January 2007.

Brian S. Holman
Presiding Judge

JUDICIAL DUTIES THAT CANNOT BE DELEGATED

And what could happen if they are...

Judicial Duty: Issuing Warrants

Article 45.014(a), CCP

“When a sworn complaint or affidavit based on probable cause has been filed before the municipal court, the JUDGE may issue a warrant for the arrest of the accused and deliver the same to the proper officer to be executed.”

Non-delegable duty

- Law enforcement may request the warrant
- Clerk may prepare the warrant
- But only a judge may issue the warrant

Judicial Duty: Issuing Capias Pro Fines

Article 45.045(a), CCP

“If the defendant fails to satisfy the judgment according to its terms, the COURT may order a capias pro fine issued for the defendant’s arrest.”

Non-delegable duty

- Clerk may prepare the capias pro fine
- Only a judge may issue the capias pro fine
- Law enforcement would then execute the writ

Judicial Duty: **Commit someone to jail**

Article 45.046(a), CCP

“The JUDGE may order the defendant confined in jail until discharged by law if the JUDGE at a hearing makes a written determination that...”

Non-delegable duty

- Clerk may prepare the commitment order
- Only a judge may sign the commitment order

Limits on judicial discretion

- A judge should not act arbitrarily or unreasonably
- A judge should view each individual case and not resort to unbending standards



Consequences of delegating a judicial duty

- Arrests may be illegal
- Evidence may be suppressed
- Judge, clerk or city may not be immune from liability



ACTIVITY: Standing Orders

Could the use of a standing order help with the problem you identified earlier?

Special thanks to Presiding Judge Brian Holman of the Lewisville Municipal Court for the sample standing orders.

SOURCES:

- *Daniels v. Stovall*, 660 F. Supp. 301 (S.D. Tex. 1987)
- *Crane v. Texas*, 759 F.2d 412 (5th Cir. 1985)
- *Sharp v. State*, 677 S.W.2d 513 (Tex. Crim. App. 1984)
- *Lopez v. Vanderwater*, 620 F.2d 1229 (7th Cir. 1980)
- Tex. Atty. Gen. Op. No. H-386 (1974)
- SCJC, Annual Report, FY 2008, 2009, 2011
- “Who Can Accept Payments from Defendants?” *The Recorder* (May 2007), p. 21