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MAGISTRATION: REMOTE VIDEO AND BOND CONDITIONS

By W. Clay Abbott
TMCEC General Counsel

In the August 2000 issue of the *Municipal Court Recorder*, I began discussing the statutory and Constitutional — albeit misnamed — process of “magistration.” In that article, the procedures set out in Article 15.17, Code of Criminal Procedure were addressed as well as the issues of bond amount, examining trials, and the continued obligation of the magistrate. In this article, the use of remote video and the more specialized magisterial issues of general bond conditions and conditions mandated in particular offenses are explored.

REMOTE VIDEO 15.17 “MAGISTRATIONS”

Like most legal proceedings, the 15.17 hearing must be done in open court. This requires the presence of both a magistrate and a defendant, and an opportunity for exchange between the two. Like other judicial actions it cannot be delegated or assigned by the magistrate. When Article 15.17, Code of Criminal Procedure requires the accused be taken before the magistrate, the magistrate’s presence is required. But Art. 15.17, C.C.P. does allow

some unique ways of appearing.

The Code provides that appearance be “in person” or by broadcast through “closed circuit television.” The need for ease and jail security, and the tremendous advances in technology, have led to advancement in the law. Article 15.17, C.C.P. requires that the remote video system allow for two-way communication and that remote video 15.17 hearings be recorded. The relevant language reads:

A closed circuit television system may not be used under this subsection unless the system provides for a two-way communication of image and sound between the arrested person and the magistrate. A recording of the communication between the arrested person and the magistrate shall be made. The recording shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on which the recording is made if the person is charged with a misdemeanor or the 120th day after the date on which the recording is made if the person is charged with a felony. The counsel for the defendant may obtain a copy of the recording on payment of a reasonable amount to cover costs of reproduction.

It is important to note that recording the hearings is only necessary if the remote video system is used. The magistrate should balance the effort

expended in correctly operating a remote video system with the security and convenience it provides. It may not be the best choice for every jurisdiction.

These provisions also make it clear that the magistrate’s physical presence and direct case-by-case exercise of discretion are vital to the fulfillment of the duties imposed by the U.S. Constitution and Texas Code of Criminal Procedure.

BOND CONDITIONS

There are two kinds of bond conditions: general conditions applicable to all cases and specific terms allowed for bonds set on particular kinds of offenses. The special offenses include: subsequent driving while intoxicated, prostitution, stalking, offenses against children under the age of 12, and, most notably, crimes of family violence. In each of these situations, imposition of bond conditions requires

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Texas Municipal Courts Education Center

1601 Rio Grande, Suite 550
Austin, Texas 78701
512/320-8274 • Fax: 512/435-6118
or 800/252-3718

Web page: <http://www.tmcec.com>

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AROUND THE STATE

GAVEL AWARD

The Municipal Judges Section of the
State Bar of Texas voted to establish an
annual gavel award to recognize a Texas
municipal court judge particularly
distinguished by his or her professional
dedication and service. This award is
named the *Judge Michael O'Neal
Annual Gavel Award* in permanent
recognition of the outstanding profes-
sional accomplishments of Presiding
Judge Michael O'Neal of the Dallas
Municipal Court. The award will be
presented at the State Bar Convention
in Austin, June 14-16, 2001. Judge
Bill Kortemier is Chair of the awards
committee; those interested in nomi-
nating a municipal judge can contact
him at 214/741-6531.

PUBLIC WARNING

In October 2000, the Texas Commis-
sion on Judicial Conduct issued a
public warning to a municipal court
judge for failing to meet the annual
requirements for judicial education.
The judge employed a scheme
whereby the judge resigned as a
municipal court judge and was later
reappointed to the same position in an
effort to avoid the requirement for
annual mandatory judicial education.
This public warning received press
attention in many newspapers, *The
Texas Lawyer*, and *Texas Bar Journal*.

Experienced municipal judges are
reminded to meet the annual require-
ment of 12 hours of judicial education
by an approved provider. Judges who

serve as justices of the peace and as
municipal court judges are required to
meet the mandatory requirements for
both offices. The requirements are the
same for full and part-time judges.
Newly appointed municipal judges
and those with a lapse of service of
more than two years are asked to
contact TMCEC for information on
the requirements for new judges (800/
252-3718).

TMCEC staff recently met with
Margaret Reaves, the Executive
Director of the Texas Commission on
Judicial Conduct. Ms. Reaves indi-
cated that the Commission considers
failing to meet the mandatory require-
ments a serious violation of the Canons
for Judicial Conduct. Public sanctions
are likely to continue being given in
the future.

Reminder: The deadline for meeting
the annual requirement for judicial
education is August 31, 2001. A new
year will begin on September 1, 2001.
The last TMCEC approved 12-hour
school is scheduled in Midland for
June 7-8, 2001. See page 21 in this
newsletter for the FY 2001 program
schedule.

TEXAS PARKING ASSOCIATION CONFERENCE

Texas A&M will be hosting the 2001
Parking Association Conference and
Trade Show, March 28-30, at the
Hilton Hotel & Conference Center in
College Station, Texas. Anyone associ-
ated with providing parking services is
invited to attend. The session topics
and tradeshow exhibits provide
something of interest for those in the
parking business at any level. This
year's program offers cost effective
training and exposure to the newest
technology in the parking industry. A

golf tournament and a casino night will be on the agenda, as well. TPA has obtained a special nightly rate of \$70 for a single and \$90 for a double at the College Station Hilton. Contact the hotel directly for reservations at 979/693-7500, making sure to identify yourself with the Texas Parking Association Conference. The conference is open to all regular and new members associated with municipalities, colleges and universities, hospitals, airport authorities, governmental agencies, etc. Registration fee for the conference is \$130, and \$75 for the golf tournament. For reservations and information on the conference, contact Cindy Hurt at 979/458-3231 or email cyb@ptts.tamu.edu.

TCCA CONFERENCE

The Gulf Coast Chapter of the Texas Court Clerks Association is hosting the 2001 Annual Conference in Nassau Bay, Texas, September 30 - October 3, 2001. This year the Gulf Coast Chapter has planned an interesting and informative educational program. As usual, Court Clerk Certification Program Study Sessions and Tests will be held immediately preceding the conference. The conference will be held at the Hilton Houston Nassau Bay & Marina, located directly on the bay. The Nassau Bay area is known for such attractions as the Space Center Houston, Gulf Greyhound Dog Track, golf courses, and bay area sporting adventures, all located just a few miles from the hotel. For shopping, the Boardwalk in Kemah offers many unique shops and galleries.

To make hotel reservations, please call the Hilton at 281/333-9300 and state that you are with the Texas Court Clerks Association Conference. Registration forms will be sent to Texas Court Clerks Association members only, so make sure your registration is

current by contacting Janell Kucera, Treasurer, at jkucera@cityhall.ci.sugarland.tx.us or 281/275-2561. If you do not receive a conference registration packet by May 1, 2001, please contact Jennifer Sullivan at sealymc@yahoo.com or 979/885-6733.

TMCEC SCHOOL FOR MUNICIPAL BAILIFFS AND WARRANT OFFICERS

In FY 2001, The Municipal Court Education Center is offering two 2-day schools for municipal bailiffs and warrant officers. TMCEC is expecting TCLEOSE approval on the curriculum. The course will be 16 hours in length with one day dedicated to warrant and arrest issues, and one day dedicated to in-court bailiff issues. The fact that the course covers the topic of maintaining courtroom security may allow for participants' travel to be paid for by local court security funds.

School Sites and Dates:

- March 27-28, 2001: Adam's Mark Hotel, 2900 Briarpark Drive, Houston, Texas 77042, 713/978-7400
- June 18-19, 2001: Crowne Plaza Hotel, 14315 Midway Road, Addison, Texas 75001, 972/980-8877

Courts may send more than one bailiff or warrant officer to each school if space permits, but priority will be given to bailiffs and warrant officers who work full time for the municipal court. There is no registration fee. TMCEC grant funds will be used to provide all qualified participants with two nights lodging at the seminar hotel, two breakfasts, one lunch, and course

materials. No lunch will be provided on the second day. The program will begin at 8:00 am each day. Unlike the judge and clerk programs, this program will conclude at 5:30 p.m. on the second day so that a full 16 hours of credit will be received by participants (judge and clerk programs end at 12 noon). Contact Jo Dale Bearden at TMCEC (800/252-3718) with questions. Bailiffs and warrant officers may register by mail or fax. See page 22 for the registration form.

TMA BAILIFF/ WARRANT OFFICER PROGRAM

The Texas Marshal Association (TMA) will be hosting its annual conference in South Padre Island from April 8 - 13, 2001. The conference offers a 32-hour course on fugitive apprehension, as well as two mandatory update courses on cultural diversity and special investigative topics. The program provides 40 hours of TCLEOSE credit. It will be held at the Holiday Inn SunSpree Resort (956/761-5401). The special group rate is \$76 for a single or double, and participants must make their hotel reservations directly with the hotel. In addition to the courses, activities like a barbecue with a boat ride, a bay fishing trip, a lighthouse tour, and a luau are offered as part of the conference fee. Extra tickets may be purchased for the recreational activities. For information and registration, contact Susan Richmond at the Texas Marshal Association (fax 972/466-1708, telephone 972/466-3528, P. O. Box 110459, Carrollton, Texas 75011-000459). The registration fee is \$295 for members of TMA and \$355 for non-members.

TMCA/TMCEC ELECTION 2000

Members of the Texas Municipal Courts Association (TMCA) will elect statewide officers and regional members to the Board of Directors for the September 1, 2001 through August 31, 2002 term. All nomination petitions must be received by March 31, 2001. Ballots will then be mailed to members in May.

The following statewide officers will be elected for a one-year term: President-Elect, First Vice President, Second Vice President, Secretary, and Treasurer. The odd-numbered regions (Regions 1, 3, 5, 7, 9) will each elect a representative to the Board of Directors for a two-year term.

Candidates for officers will have their names put on the ballot by submitting a nomination petition signed by 20 TMCA members. Candidates for regional representatives need 10 TMCA member signatures on their nomination petition. For more information, go to the TMCA website at www.txmca.com. Submit all nominations to Judge Patsy Haynes at P.O. Box 3066, Kilgore, Texas 75662. Questions can be e-mailed to her at phaynes@imagineii.net.

NOTE: Municipal judges, prosecutors, court support and any other interested persons are encouraged to submit articles relating to municipal court practice and proceedings. TMCEC reserves the right to publish and edit any materials submitted. Statements, points of view or opinions expressed in this newsletter do not necessarily represent the position of TMCEC/TMCA. Information dealing with specific legal issues should be researched in original sources of authority.

HANDICAP PARKING PROGRAM

Last fall's records from the San Angelo Municipal Court indicated that the number of handicap parking violations had increased significantly, and that many of the offenders were high school and local university students. As an alternative to lengthy pay-out or serve-out arrangements of the mandatory \$250 fine, Judge Allen Gilbert devised a unique community service program 21 hours in a wheelchair.

Before implementing the program, Judge Gilbert first contacted Larry Evans, the chairman of the Mayor's Committee for Persons with Disabilities, a branch of the Governor's Committee. Mr. Evans endorsed the idea as an excellent learning opportunity for the offenders, as well as a valuable program for bringing public awareness to the entire city. His only question to Judge Gilbert was, "Why didn't we think of this earlier?" Confirming wider support, Evans secured a donation of five wheelchairs for the program from the West Texas Rehabilitation Center.

In the San Angelo Municipal Court, upon conviction for the first offense of violating the handicap parking law, the court assesses a \$250 fine, which may be paid in full on the date of judgment or the defendant may: (1) request an extension to pay the fine, or (2) request the "Public Awareness Program" (PAP) as community service. If the defendant requests PAP, a wheelchair (with a sign on the back - see below) is issued to the defendant. The defendant is required to spend 21 hours in the wheelchair over a period of three days. The chair must be used during the hours of 8:00 a.m. to 8:00 p.m., at a minimum of seven hours

each day. Under the community service law, 21 hours of community service in PAP would be sufficient to pay off the \$250 fine.

Municipal Court Public Awareness Program

I am not handicapped.
I violated a handicap parking zone.
If this chair is vacant
Please call 657-4368.

If the defendant is a student, he or she must attend classes in the assigned chair, asking teachers to provide written verification of the amount of time spent in the wheelchair. If the defendant is employed, he or she must explain the PAP program to the employer, work from the assigned chair, and have the employer give written verification of the amount of time spent in the wheelchair.

Upon completion of the three days, the defendant returns the wheelchair along with verification of time spent in the wheelchair to the Court. If all conditions are met, the defendant receives credit for community service.

Judge Gilbert reported that as of March 1, 2001, fourteen persons have completed the PAP program. "Once PAP was adopted, the number of violators parking in handicap parking positions drastically dropped off," commented Gilbert. News media have shown great interest in the program; the Court received calls and coverage from Dallas radio stations, CBS New York, Los Angeles Disney Radio Station (KABC) National Talk Show, Los Angeles Court T.V., and the Boston Globe Newspaper. A film crew from a German public television station recently traveled to San Angelo to make a documentary on this innovative program, one which will be shown in six European nations.

Questions about the program should be directed to Judge Allen Gilbert or Court Administrator Linda Gossett

(Municipal Court of San Angelo, 110 South Emerick, San Angelo, Texas 76903, 915/657-4371 samc@wcc.net).

Magistration continued from page 1

proper finding by the magistrate, creating records, and subsequent enforcement.

The magistrate's findings and orders must be in writing and contain a commitment if the defendant cannot post bond in a reasonable time as directed by Articles 17.25, 17.26, 17.27, C.C.P. The magistrate must then make sure the papers are delivered — through the appropriate clerk and potentially the prosecutor — to the court that has or will have jurisdiction of the case in accordance with Articles 17.30 and 17.31, C.C.P.

Finally, the magistrate must keep record of all legal actions. Article 17.39, C.C.P. provides:

A magistrate or other officer who sets the amount of bail or who takes bail shall record in a well-bound book the name of the person whose appearance the bail secures, the amount of bail, the date bail is set, the magistrate or officer who sets bail, the offense or other cause for which the appearance is secured, the magistrate or other officer who takes bail, the date the person is released, and the name of the bondsman, if any.

The importance of this record-keeping function becomes even more important in view of Art. 17.09, C.C.P., which makes it clear that the bail set at the initial appearance follows the case to its conclusion. The court with jurisdiction may only alter the original bond and its terms — or lack thereof — by finding “good and sufficient cause.” Although guidelines are limited and applied case by case, such modification could require an evidentiary hearing, *Miller v. State*, 855 S.W.2d 92 (Tex.

App. -Houston {14th} 1993). It is also important to note that Section 201.004 of the Local Government Code removed restrictions requiring records be kept in a well-bound book and allows modern record-keeping systems (such as a computer database) to be used.

GENERAL CONDITIONS OF BAIL

Chapter 17 of the Code of Criminal Procedure controls the setting, making, and recording of bail in criminal cases. The Code of Criminal Procedure implements the broader mandate of Art. 1, Section 10 of the Texas Constitution. The Texas Constitution creates the right, with some limited exceptions, to an achievable bond in all criminal cases less than capital murder. Chapter 17 of the Code of Criminal Procedure, in the interest of public safety, counters this policy of pretrial release on bond by providing the magistrate with tools to control the released defendant's behavior while on bond.

One condition that is not allowed is mandating the form a bond can take. The magistrate cannot require that a bond be made in cash as opposed to being made by a surety or bonding company, *Professional Bail Bondsman of Texas v. Carey*, 762 S.W.2d 691 (Tex. App.-Amarillo 1988). See also *Ex Parte Deaton*, 582 S.W.2d 151 (Tex. Crim. App. 1979). Bonds may be designated as personal bonds — incorrectly and commonly referred to as personal recognizance bonds — if the offense is not one of the serious felonies listed in Art. 17.03, C.C.P. Personal bonds must include a list of personal information and a sworn promise to appear as set forth in Art. 17.04, C.C.P. If the county has set up a personal bond office under Art. 17.42, C.C.P., then the defendant on a personal bond may be required to pay bond and supervision fees, and report to the personal

bond supervision officer. This program effectively places the defendant in what resembles a pretrial probation.

The general provision allowing conditions or terms of bond is found in Art. 17.40(a), which reads as follows:

(a) To secure a defendant's attendance at trial, a magistrate may impose any reasonable condition of bond related to the safety of a victim of the alleged offense or to the safety of the community.

Two purposes must be served by the conditions imposed by the magistrate: the defendant's appearance at trial and the safety of the victim or public. Any term must be related to those goals. Such a term must be clearly stated and is subject to attack if it is vague or fails to put the defendant on notice of the conduct required or prohibited. It is important to note that the conditions are not created for punishment or rehabilitation — both being premature at this point. Terms should be in writing and specifically read or explained to the defendant during the 15.17 hearing. Actual notice is essential to later enforcement.

This general provision is supplemented by many more specific terms. Two articles apply to all offenses. The first, Art. 17.43, C.C.P., provides that a home curfew or electronic monitoring can be a condition of a personal bond. This Article gives the magistrate the ability to: 1) make such conditions, 2) place the defendant under the supervision of “an agency,” and 3) require the defendant to pay the cost of such supervision as a condition of bond. Article 17.44, C.C.P. provides such authority in all other bonds. Article 17.44, C.C.P. also provides for drug testing as a condition of bond. Refusals to take a test or failures to pass it are both grounds for revocation of the bond.

SPECIFIC OFFENSE CONDITIONS

The rest of the specific terms allowed by the Code all relate to specific offenses. Some Articles contain mandatory language. But in order to impose most conditions, the magistrate should be able to find that: 1) probable cause was shown that the defendant committed the specific offense, and 2) that the condition is necessary for the protection of the victim or community. These specific terms must also be clear and complete and put the defendant on notice of the conduct required or forbidden.

DWI INTERLOCK

The greatest threat of death or injury to the general public is most likely the intoxicated driver. In frustration with the habitual nature of this offense, the legislature passed Art. 17.441, C.C.P. This article allows the magistrate to require the installation of an interlocking, deep-lung-breath-analysis mechanism in the defendant's car. Such a device disables the starter of a vehicle unless the driver can provide an alcohol-free breath sample. To impose this condition, the magistrate must find probable cause to believe that: 1) the defendant was driving, boating, or flying while intoxicated, and 2) that the defendant has a prior final conviction — including probation — for one of those offenses. To enhance a current offense, Sec. 49.09, Penal Code requires the prior offense to have been committed no more than 10 years from the date of the new offense. The magistrate must therefore have probable cause to determine the offense date — not judgment date — of the prior offense. If the magistrate has probable cause to believe that the defendant committed the offense of intoxicated assault or intoxicated manslaughter, no prior offense is required to impose this term.

The language of Art. 17.441(a) is mandatory. The magistrate, upon making the required findings, must impose the installation of the breath-analysis device. The magistrate's order should require the installation in a specific vehicle and should impose a condition prohibiting the defendant's use of any vehicle without such a device. The order should mandate that the installation is at the defendant's expense and must be completed within 30 days. Finally, the magistrate may designate an agency to verify the defendant's compliance and payment of a fee not to exceed \$10 to that agency. The *TMCEC Forms Book 2000* has a form for this order on page 110. This condition can be costly, but also provides some protection against dangerous recidivism. However, the second section of the article allows the magistrate not to impose the condition if the magistrate affirmatively finds it would be in the interest of justice not to do so.

Frequently, questions arise about the period of time an intoxicated person must wait before "magistration" or release on bond. The answer is twofold. First, the magistrate is responsible for determining that the defendant is able to understand the warnings and proceeding. This may necessitate delay. No statutory guidelines exist. Second, the administrative guidelines of the Commission on Jail Standards provide minimum times an intoxicated person should remain in custody for their own protection. These administrative rules could be in conflict with the Code of Criminal Procedure. The issue is best resolved by members of a jail's staff whose obligation is to safely handle prisoners. There is no provision for the magistrate to order detention as a condition of bond.

HIV/AIDS COUNSELING

Another offense that is subject to special bond conditions is prostitution.

Article 17.45, C.C.P. provides that the magistrate may order HIV/AIDS counseling or education as a condition of bond in those cases. No specific monitoring provision is contained in that statute.

SPECIAL VICTIMS

Release of stalking offenders bears a particular risk to victims. If the magistrate finds probable cause to believe the defendant has violated Sec. 42.072, Penal Code (the stalking statute), Art. 17.46, C.C.P. allows the magistrate to prohibit the offender from communicating directly or indirectly with the victim or going to or near places the victim is required to be. The magistrate may make orders relating to the victim's home, place of employment or business, school or daycare. The order must contain specific descriptions of such places and the minimum distances the defendant must maintain.

Stalking victims also have a right to notification that the defendant charged with stalking them has been liberated from custody. Article 17.29, C.C.P. provides that the law enforcement agency holding such a defendant make a reasonable attempt to notify the victim of the defendant's imminent release. Although this duty is not imposed on the magistrate, there is no reason the magistrate should not ascertain its accomplishment.

Child victims, like stalking victims, are in a position of special risk when their abusers are released. Without the intervention of the magistrate, many offenders would return to positions of access and even power over their child victims. If the magistrate finds probable cause that the offender committed an assault, sexual assault, or other sexual offense against a child 12 years of age or

younger, conditions under Art. 17.41, C.C.P. can be ordered. This article allows the magistrate to order the defendant not to communicate with the victim or go near the child's home, school or any other specified location. Once again, the locations and distances should be set out in detail. The magistrate may allow supervised access. A bond condition form related to this Article is found in the *TMCEC Forms Book 2000* on page 113. If the magistrate's order conflicts with an order of a family court, the magistrate's order prevails for a period set by the magistrate not to exceed 90 days. This condition may give the child victim and the child's family the opportunity to provide for their own continued safety.

Like the child victim, adult victims of family violence often need temporary safe haven and other special protections from the released offenders. Family violence is defined by Section 71.004, Family Code. Family violence includes any act intended to cause physical harm, or threat to do the same, to any member of the actor's family or household. A household is a unit of all the people living in the same dwelling or who have lived in the same dwelling, Section 71.005-71.006, Family Code. Any victim of family violence, like a stalking victim, is entitled to a reasonable attempt by the law enforcement agency holding such a defendant to give personal notice of the defendant's imminent release. Again this duty imposed by Art. 17.29, C.C.P. is placed on law enforcement, not the magistrate.

Notice is often not enough to assure the safety of a victim who lives in the same home as the released offender. In order to stem the cycle of violence and provide a victim with an opportunity to safely seek assistance or refuge, Art. 17.291, C.C.P. provides the magistrate the means to delay release of appropri-

ate domestic abusers. The magistrate must find probable cause that a family violence offense was committed and probable cause that "the violence will continue if the defendant is immediately released." The defendant's release — after making the bond set by the magistrate — is delayed for 24 hours if the magistrate makes a written finding and order. Under Art. 17.291(b)(2), the magistrate may extend the delay up to 48 hours. If the delay exceeds 24 hours, the magistrate must also find probable cause that the defendant has been arrested in the preceding 10 years for an offense involving family violence or any offense in which a deadly weapon was used. Forms to impose this condition are found in the *TMCEC Forms Book 2000* on pages 101 and 102.

A magistrate in these situations should also consider entering emergency protection orders (EPO) under Art. 17.292, C.C.P., if appropriate. Such orders are separate from bond conditions. An example EPO is contained in the *TMCEC Forms Book 2000* on pages 104-108. Bond conditions similar to the terms of the EPO could be imposed under the general provisions of Art. 17.40, C.C.P, discussed earlier.

ENFORCEMENT OF BOND CONDITIONS

Should a defendant violate the terms of the bond, the bond may be revoked. Art. 17.40 (b) provides:

(b) At a hearing limited to determining whether the defendant violated a condition of bond imposed under Subsection (a), the magistrate may revoke the defendant's bond only if the magistrate finds by a preponderance of the evidence that the violation occurred.

Such a hearing could presumptively be held pursuant to a motion by the State

or under the court's own motion. Under the rationale of *Guerra v. Garza*, 987 S.W.2d 593 (Tex. Crim. App. 1999) — discussed in the August 2000 article — only the magistrate setting bond, or the court with jurisdiction after filing of charges, could hold such a hearing.

While bond terms might complicate the 15.17 hearing for the magistrate, they provide a balance between the rights of the accused to pretrial release and the safety of victims and the public. Communities in Texas are entitled to have the 15.17 magistrate make the effort to strike that balance.

IMPROPER JUDICIAL CONDUCT

The Texas Commission on Judicial Conduct issued the sanctions shown below for improper judicial conduct during FY 2000 (September 1, 1999 – August 31, 2000). The sanctions are listed in descending order of severity with some sanctions involving more than one case. The descriptions are excerpts from 2000 *Annual Report of the State Commission on Judicial Conduct*. The full text of any public order can be requested by writing to the Commission at P.O. Box 12265, Austin, Texas 78711.

PUBLIC CENSURE

- The judge imposed or attempted to impose local county rules in his own deposition conducted in a lawsuit in a neighboring county; he ordered armed bailiffs present at the deposition to confiscate the videographer's videotape, and directed that the videotape and audiotape of the deposition be

sent to the judge of a specific district court. [Violation of Canon 2A.] *Judicial Inquiry No. 75, Order of Public Censure of Brady G. Elliott, District Judge (10/25/99)*.

- The judge set appearance bonds totaling \$690,000.00, which he knew or should have known were excessive. Additionally, in issuing arrest warrants, the judge relied on officers' representations rather than the judge's own independent judgment as a magistrate to issue arrest warrants. [Violation of Canon 2A.] *Judicial Inquiry No. 78, Order of Public Censure and Education of Gualberto Weaver, Justice of the Peace (08/11/00)*.

PUBLIC REPRIMAND

- The judge, whose court has jurisdiction over alcohol-related misdemeanor offenses, on his own behalf entered a plea of *nolo contendere* in municipal court to the charge of public intoxication. [Violation of Canon 2A.] *CJC No. 12573, Public Reprimand of Wallace Bowman, County Court-at-Law Judge (10/04/99)*.
- The judge became romantically involved with a married woman who had matters pending in the judge's court. [Violation of Canons 2B and 4A.] *CJC No. 12112, Public Reprimand of John Polanco, Jr., Former Justice of the Peace (10/25/99)*.
- The judge appointed his long-time friend and former bailiff as a member, and as the foreman, of the grand jury. The judge also appointed a second grand jury without discharging the first grand jury. [Violation of Canons 2A and 3C(4).] *CJC No. 9550, Public Reprimand of Alex R. Gonzalez, Retired District Judge (12/17/99)*.
- The judge was under the influence of alcohol when he conducted court proceedings while serving as a visiting judge. Additionally, the judge failed to appear in court for a scheduled jury trial. Court personnel later located the judge in his hotel room, apparently under the influence of alcohol or medication. [Violation of Article V, Section 1-a(6)A of the Texas Constitution.] *CJC No. 12290, Public Reprimand of J.E. Blackburn, Former Judge (12/17/99)*.
- The judge made offensive racial statements to city policemen in the presence of citizens, and conveyed that he had the power to influence other judges in advancing the private interests of his grandson who had been issued a traffic citation. [Violation of Canons 2A, 2B, 3B(4) and 4A.] *CJC No. 00-0162-JP, Public Reprimand of Charles Huegler, Retired Justice of the Peace (01/25/00)*.
- Without a hearing or notice to the prosecutor, the judge unilaterally changed a bond that was set by another magistrate. The judge changed the bond as a personal favor to the defendant's brother, who was a long-time, personal acquaintance of the judge. Additionally, the judge voluntarily appeared as a character witness at a sentencing hearing on behalf of a criminal defendant. [Violation of Canons 2A, 2B, 3B(2) and 3B(8).] *CJC Nos. 12257 and 00-0129-JP, Public Reprimand of Ramiro V. Quintero, Justice of the Peace (01/25/00)*.
- The judge subjected an employee to "unwelcomed, illegal sexual harassment" which included "degrading conduct which was made a definite condition of . . . continued employment." The judge engaged in a "game" in which the judge would bind the employee's hands behind her back, tie her ankles, and gag her with a scarf. While the employee was bound and gagged, the judge would watch scenes from his personal collection of "bondage" videos. [Violation of Article V, Section 1-a(6)A of the Texas Constitution.] *CJC No. 00-0321-CC, Public Reprimand of Robert E. Hollman, Former Title IV-D Master (04/26/00)*.
- The judge disassembled and reassembled two revolvers during voir dire in a capital murder case. Additionally, the judge allowed bailiffs to read magazines during court proceedings, jeopardizing the court's security and placing persons in the courtroom at risk. Further, the judge distributed cards that contained the seal of the State of Texas, described the judge as "Judge H. Lon Harper," and stated that the judge is a "State District Judge Sitting by Assignment" and is a "State Qualified Mediator." [Violation of Canons 2B, 3B(3) and 3B(4).] *CJC No. 00-0257-RT, Public Reprimand of H. Lon Harper, Former District Judge (06/28/00)*.
- The judge telephoned juvenile girls who were on probation in his court for truancy and engaged in explicit sexual conversations. Additionally, the judge pled no contest to the charge of official oppression. [Violation of Canons 2A, 2B and 3B(4).] *CJC No. 00-1041-JP, Public Reprimand of Marvin Dean Mitchell, Former Justice of the Peace (08/18/00)*.
- The judge ordered a traffic defendant, who had damaged the judge's car in an auto accident, to pay restitution directly to the

judge. The judge, as the injured party, should have known she was disqualified to hear the matter.

The judge assumed the defendant's guilt and assessed the defendant's punishment and fine, even though the defendant had not entered a plea. The judge acted in a discourteous and intemperate manner during the proceedings. The judge assessed punishment and fines, and ordered the defendant to pay restitution directly to the judge without providing the defendant with the full range of options available to the defendant. [Violation of Canons 2A, 2B, 3B(1), 3B(4) and 3B(5).] *CJC No. 00-0935-MU, Public Reprimand of Nancy Robb, Municipal Judge (08/21/00).*

PUBLIC WARNING

- The judge conducted hearings on motions to enforce child support orders after acting as counsel of record in a prior proceeding in the same case. [Violation of Canon 2A.] *CJC No. 12057, Public Warning of Gilberto Rosas, Title IV-D Master (10/04/99).*
- During court hours, the judge kissed an employee under his supervision, an action which was uninvited and unwelcomed. Additionally, the judge made gender-biased comments to a staff attorney employed by the court. [Violation of Canons 3B(4) and 3B(6).] *CJC No. 00-0283-AP, Public Warning and Order of Education of Roby Hadden, Appellate Justice (04/26/00).*
- The judge failed to comply with the reporting requirements of the Texas Election Code, Sections 254.0611, 254.063, 254.064, and 254.093. [Violation of Canon 2A.] *CJC 00-0304-DI, Public*

Warning of Annette Galik, District Judge (08/21/00)

PUBLIC ADMONITION

- The judge appointed his son to represent litigants in his court and ordered his son paid from county funds. [Violation of Canon 2A and 3C(4).] *CJC No. 12204, Public Admonition of Don L. Jarvis, County Court-at-Law Judge (10/22/99).*
- The judge assessed fines in water district ordinance cases after the statute authorizing such penalties had been repealed, and wrongly held hearings on an "instant" basis. [Violation of Canon 2A.] *CJC No. 12064, Public Admonition and Order of Education of Jeffrey R. Driver, Municipal Judge (12/17/99).*
- The judge required membership in a particular voluntary organization, *i.e.*, the Houston Bar Association, as a prerequisite for judicial appointments. Additionally, the judge had an impermissible *ex parte* conversation with a defendant regarding the merits of the defendant's criminal case. Following the *ex parte* conversation, the judge announced from the bench that he desired to revise the sentence that he had imposed moments before. [Violation of Canons 2A, 2B, 3B(8) and 3C(4).] *CJC Nos. 00-0024-DI and 00-0150-DI, Public Admonition of Jim Wallace, District Judge (01/14/00).*
- The judge allowed his name, judicial position, likeness, and supportive statements to be used in a political advertisement for a candidate's re-election campaign. [Violation of Canons 2B and 5(3).] *CJC No. 00-0689-JP, Public Admonition of Tony Torres, Justice of the Peace (08/16/00).*

- In the course of conducting an inquest, the judge moved the deceased's purse and examined its contents prior to the completion of an investigation by law enforcement officials. The judge left the scene and later returned to search for the deceased's jewelry. The deceased was a good friend of the judge. Further, when the judge learned that the deceased's niece had filed a complaint against the judge with the State Commission on Judicial Conduct regarding the judge's actions at the inquest, the judge telephoned the niece and chastised her for filing the complaint. [Violation of Canons 2A and 3B(4).] *CJC No. 00-0341-JP, Public Admonition of Polly Kite, Justice of the Peace (06/28/00).*

PUBLIC ADMONITION AND ORDER OF EDUCATION (SPECIAL COURT OF REVIEW)

- The judge, at times, ignored proper procedures and operated beyond the specific boundaries of the law. The judge issued writs of attachment on the basis of oral testimony, without holding hearings and in the absence of written complaints; ordered parties to mediation in criminal cases; failed to discharge an accused when there was insufficient evidence to support issuing a peace bond; pursued peace bond proceedings without consideration to due process, probable cause, jurisdiction, or venue; and pursued peace bond proceedings in cases involving allegations of stalking and family violence. [Violation of Canons 2A and 3B(2).] *No. A-2000-1, Special Court of Review, Public Admonition and Order of Education of Thomas G. Jones, Justice of the Peace (08/01/00). (Appeal of CJC Nos 12589 and 00-0275-JP, Order of Educa-*

tion of Thomas G. Jones, Justice of the Peace (04/26/00).

PUBLIC ORDER OF EDUCATION

- The judge ordered a mother to ensure that her daughter complied with court-ordered community service. When the daughter did not comply, the judge acted without legal authority by: (1) issuing an arrest warrant against the mother based on a legally defective affidavit/complaint; (2) requiring the mother to obtain a cash-only bond to the exclusion of a surety bond; (3) failing to conduct an indigency hearing before committing the mother to jail to pay off the fine he had imposed against her; (4) failing to offer the mother the options of paying the fine in installments or performing community service in lieu of jail; and (5) ordering the mother to be confined in jail for her “disrespect” rather than finding her in contempt of court. [Violation of Canons 2A, 3B(2) and 3B(4).] *CJC No. 00-0097-JP, Public Order of Education of Thurman Bartie, Justice of the Peace (06/28/00).*

PRIVATE REPRIMAND

- The judge consumed an excessive amount of alcohol while attending a social gathering of a local bar association and, during that gathering, urinated into a garbage receptacle located in an open area, which was in sight of guests. [Violation of Article V, Section 1-a(6)A of the Texas Constitution.] *Private Reprimand of County Court-at-Law Judge (12/17/99).*
- The judge, whose court has jurisdiction over alcohol-related offenses, pled guilty to the charge of driving while intoxicated. [Violation of Canons 2A and

4A(1).] *Private Reprimand of County Judge (01/25/00).*

- The judge attempted to mediate a private dispute, even though no case was pending in the judge’s court. Additionally, the judge engaged in *ex parte* communications with a law enforcement officer about the merits of a criminal case, and issued a fine without giving the defendant the opportunity to enter a plea and without holding a hearing. [Violation of Canons 2B, 3B(8) and 6C(2).] *Private Reprimand and Order of Education of Justice of the Peace (01/25/00).*
- The judge used demeaning, profane, and unprofessional language to parents who were before the judge’s court in custody cases. [Violation of Canons 2B, 3B(3) and 3B(4).] *Private Reprimand of Associate Judge (04/26/00).*

PRIVATE WARNING

- The master limited an attorney’s ability to practice law in the master’s court and advised the attorney that he intended to treat the attorney differently than other attorneys appearing in the court. [Violation of Canons 2A, 3B(5) and 3B(8).] *Private Warning of Title IV-D Master (10/04/99).*
- The judge accepted personal property from a criminal defendant in lieu of payment of court costs. [Violation of Canon 2A.] *Private Warning and Order of Education of Justice of the Peace (11/15/99).*
- The judge made improper comments to an attorney, including a threat to take retaliatory action against the attorney. [Violation of Canons 2A, 3B(4) and 3B(5).] *Private Warning of Former Associate Judge (12/17/99).*

- After the judge’s court had lost jurisdiction over the civil case, the judge assisted the plaintiff in collecting on the judgment. Without holding a hearing, the judge held the defendant in contempt for failure to pay the judgment and issued a warrant for the defendant’s arrest. In a separate criminal case, the judge issued an arrest warrant for an unnamed defendant based upon a sworn complaint, which was devoid of specifics. [Violation of Canons 2A, 2B and 3B(2).] *Private Warning and Order of Education of Justice of the Peace (01/25/00).*
- During telephone calls with a litigant, the judge made disparaging comments about the litigant and told the litigant that the judge would throw the litigant in jail if the litigant came to the judge’s court. [Violation of Canon 3B(4).] *Private Warning and Order of Education of Justice of the Peace (01/25/00).*
- The judge prepared a newspaper advertisement in which the judge urged local residents to vote for a specific candidate for a local public office. [Violation of Canons 2B and 5(3).] *Private Warning of Municipal Judge (02/22/00).*
- The judge mailed postcards urging voters to support the judge’s son’s political campaign. [Violation of Canons 2B and 5(3).] *Private Warning of Appellate Justice (02/22/00).*
- Judge A telephoned and wrote letters to Judge B on behalf of a traffic defendant who had a case pending in Judge B’s court. [Violation of Canon 2B.] *Private Admonition and Order of Education of Justice of the Peace (05/11/00).*
- The judge was willful in his conduct and inconsistent with his duties when he was unavailable to

perform magistrate's duties and failed to advise his office of where or whether he could be found or contacted. He did not at any time contact his office to advise it of his illness and availability. [Violation of Article V, Section 1-a(6)A of the Texas Constitution.] *Private Admonition of Justice of the Peace (06/28/00)*.

- The judge met privately in chambers with a party's attorney and, based upon that meeting, announced a decision in the case. [Violation of Canon 3B(8).] *Private Admonition of County Court-at-Law Judge (08/16/00)*.
- The judge told a city manager that the judge would bring the manager before a grand jury if the manager further threatened certain police officers with termination from their jobs. Additionally, during an election in which the judge's father was a candidate, the judge talked to a voter within the prohibited electioneering area and disputed the time that the polls closed with the election judge. [Violation of Canon 2B.] *Private Admonition of District Judge (08/21/00)*.

PRIVATE ORDERS OF EDUCATION

- The judge telephoned a traffic defendant, who had requested a jury trial, in an effort to avoid conducting a jury trial. Subsequently, the judge telephoned the defendant on three occasions to explain the legal options available to him. [Violation of Article V, Section 1-a(8) of the Texas Constitution.] *Private Order of Education of Municipal Court Judge..*
- Although no case was pending in the judge's court, the judge telephoned and personally met

with a landlord to encourage the landlord to resolve the dispute with the tenant, and issued to the landlord a letter on official stationery. The judge presided over an action filed later by the tenant against the landlord, after engaging in numerous *ex parte* communications with each party. Instead of scheduling the hearing in accordance with the time frames set forth in the Texas Property Code, the judge conducted the hearing on the same day the landlord was served with the citation. [Violation of Canons 2A, 2B and 6C(2).] *Private Order of Education of Justice of the Peace (11/15/99)*.

- The judge permitted the court staff to telephone a traffic defendant to attempt to persuade the defendant to waive the right to a trial. In a separate case, the judge negotiated a plea bargain agreement and the "instant" payment of the fine and costs imposed on a traffic defendant. [Violation of Canons 2A and 6C(2).] *Private Order of Education of Justice of the Peace (12/27/99)*.
- The judge improperly ordered a young man to remove his earring or leave the premises of the courthouse. [Violation of Canon 2A.] *Private Order of Education of Justice of the Peace (12/27/99)*.
- The judge failed to accept take-home video driving safety instruction as a valid prerequisite for dismissing traffic citations. The judge required qualified traffic defendants to complete defensive driving courses that were administered in a classroom setting. [Violation of Article V, Section 1-a(6)A of the Texas Constitution.] *Private Order of Education of Justice of the Peace (12/27/99)*.

- The judge failed to properly supervise a clerk under her direction over a five-year period; relied upon the clerk to receive, record, deposit and report funds received by the court; made no effort to learn the use of computerized information system used by the court, allowed clerk access to signature stamp bearing the judge's name, and relied on the advice given by the clerk. The clerk's actions resulted in the clerk being indicted for theft and tempering with or fabricating evidence and tampering with governmental records. [Violation of Article V, Section 1-a(6)A of the Texas Constitution.] *Private Order of Education of Justice of the Peace (02/02/00)*.
- Prior to the expiration of the 30 days allowed by law for a traffic defendant to present a certificate of completion of a driving safety course, a judge issued a show cause order requiring the defendant to appear and explain why the defendant had not submitted the certificate of completion, rendered a judgment against the defendant, and issued a *capias pro fine* for the arrest of the defendant for failure to submit the certificate of completion. [Violation of Canons 2A and 3B(2).] *Private Order of Education of Justice of the Peace (02/11/00)*.
- The judge held a litigant in contempt of court when court was not in session and committed the litigant to jail. In addition, the judge failed to maintain professional competence in the law. [Violation of Canons 2A and 3B(2).] *Private Order of Education of Justice of the Peace (04/26/00)*.
- The judge failed to provide judicial case records to the public. [Vio-

lation of Canon 2A.] *Private Order of Education of Municipal Judge (05/01/00)*.

- The judge held a hearing when no case was pending in his court. [Violation of Canon 2A.] *Private Order of Education of Municipal Judge (08/16/00)*.
- When the defendant failed to appear, the judge entered a default judgment in favor of the plaintiff for \$62.00 in court costs only. The judgment was not signed by the judge and did not have the court seal in place. The plaintiff later obtained from court personnel a copy of a document appearing to be a final judgment awarding the plaintiff \$5,000, which was stamped with the judge's official seal and signed with a stamped signature. The judge did not review the document nor did he direct his court personnel to stamp the document with the judge's signature in the judge's presence. Instead, the judge allowed court personnel to have access to the stamp and official seal, and in the judge's absence, use the judge's signature stamp on documents and letters. This practice resulted in an incorrect judgment being provided to the plaintiff. [Violation of Canon 2A.] *Private Order of Education of Justice of the Peace (08/21/00)*.
- The judge made a gratuitous and inappropriate comment to an African-American court employee about the Ku Klux Klan, a comment that could reasonably be construed as manifesting racial bias. [Violation of Canons 3B(4) and 3B(6).] *Private Order of Education of Municipal Judge (8/21/00)*



ETHICS ADVISORY OPINIONS

The Judicial Ethics Committee of the Judicial Section of the State Bar of Texas issues opinions on ethical issues faced by Texas judges. Although these are not binding on the Judicial Conduct Commission, the reasoning of these opinions is insightful.

A municipal judge may request an ethics opinion by writing to the Honorable Suzanne Stovall, Chair of the Judicial Ethics Committee. Judge Stofall's address is: County Court at Law No. 1, County Courthouse, Conroe, Texas 77301-2883. To view all previous ethics advisory opinions, visit www.courts.state.tx.us/judethics/.

JUDGE OR JUDICIAL CANDIDATE OWNED BUSINESS

Opinion No. 227 (1999)

A candidate for judicial office owns, with his spouse, the only abstract title insurance company in the county.

QUESTION 1: Is this business relationship permissible under the code for a judicial candidate? For a sitting judge?

ANSWER 1: Yes, as to the candidate and no as to the sitting judge.

The Code's only requirement of a judicial candidate is that the candidate refrain from inappropriate political activity as described in Canon 5. See Canon 6 for list of those covered by the Code.

It is the belief of the committee that a sitting judge is not permitted to

maintain these business interests due to the provisions of Canon 4. While Canon 4D(2) does allow a judge to operate a business, not publicly held, this provision is subject to 4D(1). Canon 4D(1) requires a judge to refrain from financial and business dealings which tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves. The nature of this business, coupled with the fact it is the only abstract title company in the county, and the court is one of general jurisdiction, make such a conflict inevitable. See Opinion 23.

QUESTION 2: Assuming a candidate who owns an abstract title insurance company or whose wife owns such business is elected, would the judge or the spouse be obligated to divest themselves of these business interests?

ANSWER 2: Yes, under the reasoning in the answer to Question 1, the elected judge should divest himself of the business in a reasonable fashion. Canon 7 requires that a person, to whom the code becomes applicable, should arrange his or her affairs as soon as reasonable to comply with the code.

In the event that the spouse of a sitting judge owns an abstract business, the judge must recuse himself in any case involving a lawyer or other person who does business with the judge's spouse. It is the duty of the judge to be informed about the economic interests of any family member residing in the judge's household. If the spouse's interest causes frequent disqualification, then Canon 4D(3) requires a judge to divest himself of economic interests as soon as the judge can do so without serious financial detriment.

QUESTION 3: May a sitting judge acquire an interest in a private mortgage company?

ANSWER 3: Yes, so long as the requirements of Canon 4D are followed. The ownership, whether as an active participant or an investor only, must not be in a company that is “publicly owned” (*i.e.*, has more than 10 unrelated owners), must not exploit the judge’s position or involve the judge in frequent transactions with persons likely to come before the court. The Canon requires that a judge’s investments should be managed so as to minimize the number of cases in which the judge is disqualified.

QUESTION 4: May a judge who owns a corporation which operates a title company located outside the judge’s district, lease the company to a private company?

ANSWER 4: Yes, with the same restrictions as enumerated in answer (3) above. See Opinion 179.

QUESTION 5: Could potential violations in any of the above situations be remedied by a blind trust?

ANSWER 5: No. A blind trust operates by investing a judge’s assets without the judge having any knowledge of where his/her assets are invested. The blind trust is not an effective tool for shielding the judge from knowledge of his investments when the judge’s asset is a company doing business such as the abstract and title company described here.

The committee would comment that it is difficult to answer these inquiries in the abstract. Each situation would depend upon its own circumstances, the types of cases a judge hears, and the effect of the ownership interests on those who appear before the judge, both in reality and in perception. The committee cautions any judge or candidate to evaluate each such

situation very carefully. Besides the above referenced Canons, each such situation should be judged with Canons 1 and 2 in mind.

JUDGE IN FUND-RAISING EVENT

Ethics Opinion 237 (1999)

QUESTION: Judges are invited to participate in a sports event with members of a bar association. The event is a fund-raiser for scholarships given by the bar association. The judges’ participation is the main attraction used in selling tickets to the event. May judges participate in such an event?

ANSWER: Yes. The competing issues are found in Canon 4C(2) which prohibits judicial fund-raising but allows a judge to be a speaker or guest of honor at a fund-raising event. It is clear that the judge cannot fund-raise directly. The issue becomes difficult when others are selling tickets (fund-raising) based on judges’ participation. It is the committee’s opinion that in this instance the participation of the judge is similar to serving as a guest of honor and is therefore not violative of the code.

MUNICIPAL JUDGE SERVING AS CERTIFIED PEACE OFFICER, BAILIFF, DEFENSE AND/OR PROSECUTING ATTORNEY

Ethics Opinion 242 (1999)

QUESTION 1: Can a municipal court judge be employed as a certified peace officer/bailiff?

ANSWER 1: No. A municipal court judge may not be employed as a certified peace officer/bailiff. A municipal court judge presides over criminal actions in which the State’s primary witness is a certified peace officer. This would create an appearance of impropriety in violation of Canon 2A, which provides, “a judge shall comply with the law and act at all times in a manner that promotes public confidence in the

integrity and impartiality of the judiciary.” Such conduct would also be in violation of Canon 4A(1), which provides that “a judge shall conduct all of the judge’s extra-judicial activities so that they do not cast reasonable doubt on the judge’s capacity to act impartially as a judge.”

QUESTION 2: Can a peace officer serve as a municipal court judge?

ANSWER 2: Yes, a certified peace officer may serve as a municipal court judge only in the event he/she is totally on inactive status as a peace officer.

QUESTION 3: Can a lawyer serve both as a part-time municipal court judge for one city and a part-time prosecutor for another?

ANSWER 3: Yes. Canon 6C(1)(d) allows a municipal court judge to practice law if the judge is an attorney.

Pursuant to this Canon, the judge would not be permitted to prosecute in the court on which the judge serves, nor would he/she be permitted to prosecute, in any court, any case related to a matter heard as a judge.

QUESTION 4: Can a lawyer serve as a part-time municipal court judge and continue his practice as a defense lawyer in the same area?

ANSWER 4: Yes. See answer to Question 3.

MAY A LAWYER/JUDGE ACCEPT A REFERRAL FEE WHILE IN OFFICE?

Ethics Opinion 255 (2000)

QUESTION: Is a judge entitled to accept a referral fee under the following facts: A judge refers the case of a family member to an attorney who does not regularly appear before the judge. Neither the family member nor the referred attorney resides in the same jurisdiction as the judge. The referred case involves a specialty known as “fen-phen” litigation. The case has settled and the referred attorney seeks to pay a referral fee to the judge as a “forwarding

attorney.” May the judge accept the fee?

ANSWER: No. The Code of Judicial Conduct does not provide a direct answer to the question. Canon 4G does, however, state that: A judge shall not practice law except as permitted by statute or this Code. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge’s family.

Allowing a judge to receive compensation for referring a family member’s case to an attorney would be inconsistent with the spirit of Canon 4G, which would disallow the judge from receiving compensation for actually working on that case.

Additionally, Canon 4D provides:

A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge’s impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves.

In Ethics Opinion 210, this provision was applied to disallow a judge from accepting a referral fee for referring former clients to a realtor. The opinion noted that “[J]udges receiving money for referring business would not be seen as appropriate by the general public. There is a strong potential for the judge’s position to be exploited.” That rationale seems to apply to the facts of this case too.

VISITING JUDGE AS MEMBER OF NATIONAL COMMITTEE TO PREVENT WRONGFUL EXECUTIONS

Ethics Opinion 256 (2000)

QUESTION: May a visiting judge who is assigned only to the intermedi-

ate appellate courts accept an invitation to join the National Committee to Prevent Wrongful Executions?

The committee is part of the Constitution Project housed at Georgetown University Law Center. It describes itself as a bipartisan “blue ribbon” committee of former elected officials, judges, legal scholars, and journalists, including both supporters and opponents of capital punishment, which seeks to promote “greater fairness in the way the death penalty is administered.” The members of the committee authorize the use of their names in connection with its work.

ANSWER: Yes. Canon 4B allows a judge to serve as a member of an organization devoted to the improvement of the law, the legal system, or the administration of justice. As it describes itself, the National Committee to Prevent Wrongful Executions takes no position on the death penalty but seeks to educate the public and policy makers about ways to prevent “wrongful” executions and the need for certain constitutional protections when the death penalty is administered.

Furthermore, an active or visiting judge on the court of appeals could belong to this Committee without violating the mandate of Canon 5(1) to make no statement that indicates an opinion on issues that may be subject to that judge’s interpretation because intermediate appellate courts in Texas have no jurisdiction to hear death penalty cases.

MAY A JUDGE’S STAFF ACCEPT PAYMENT FOR INFORMATION REGARDING CASES IN JUDGE’S COURT?

Ethics Opinion 257 (2000)

QUESTION: A commercial web site that publishes data about civil litigation has solicited information from a trial judge regarding cases decided in

her court. The company has offered to pay \$7.50 for every jury verdict reported. The company requests the following data for each case: date, style, case number, court and name of judge. They also ask for a case description, identity of plaintiff’s attorney and defendant’s attorney, plaintiff’s experts, defendant’s experts, and “the verdict or settlement.” The company suggests that the judge’s court reporter be asked to fill out the form. May the judge or her staff supply information to this commercial database? May they receive payment for doing so?

ANSWER: No to both questions. Canon 4D(1) says that a judge shall refrain from business dealings that exploit her judicial position. Here the judge would be exploiting her judicial position if she accepts pay for forwarding information regarding official court proceedings to a commercial enterprise.

Canon 2B says a judge shall not lend the prestige of judicial office to advance the private interests of the judge or others and shall not convey the impression that others are in a special position to influence the judge. Even if the judge did not accept payment for funneling “litigation results” to the web site, the judge is using her office to advance the private interests of the commercial web site. Furthermore, serving as a conduit for information to one commercial web site but not others could foster the impression that one business is in a special position to influence the judge.

Finally, Canon 4A(2) directs a judge to conduct extrajudicial activities so that they do not interfere with the proper performance of judicial duties. By supplying the requested information on each case litigated in her court, or directing her court reporter to do so, the judge or her staff would be taking time away from their official duties to perform these nonjudicial tasks for a commercial enterprise.

In reaching this answer we note that this commercial database has not asserted that it is collecting data in an effort to improve the law, the legal system, or the administration of justice.

MAY JUDGE SEND LETTER TO BAR ASKING FOR VOLUNTEERS?

Ethics Opinion 258 (2000)

QUESTION: May a Board of Judges send out a letter with the signatures of all the judges to all members of the local bar association asking them to consider volunteering by donating time and services to the Volunteer Lawyer Project's pro bono legal clinic of Legal Services in order to supplement and /or expand the services of that organization?

ANSWER: Yes, the Board of Judges may send out such a letter. The proposed letter identifies the Volunteer Lawyer's Project as a joint undertaking of the Legal Services organization and the local and area bar associations, explaining that the project's aim is to insure the administration of justice to those served by the program. Canon 4C allows the use of judicial prestige in very limited circumstances for the improvement of the law, the legal system, or the administration of justice.

MAY A JUDGE SERVE AS A DELEGATE TO A PARTY CONVENTION OR SERVE ON A STATE PARTY EXECUTIVE COMMITTEE?

Ethics Opinion 259 (2000)

QUESTION: Do the Rules of Judicial Conduct allow judges to serve as delegates to a county, state or national party convention? Do the Rules of Judicial Conduct allow judges to serve on a state Republican/Democrat Executive Committee?

ANSWER: No, to both questions. Canon 4 provides in part as follows:

A. Extra-judicial Activities in General.

A judge shall conduct all of the judges' extrajudicial activities so that they do not:

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

B. Avocational Activities.

A judge may speak, write, lecture, teach and participate in extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.

Canon 5 provides in part:

- (1) A judge or judicial candidate shall not make statements that indicate an opinion on any issue that may be subject to judicial interpretation by the office which is being sought or held, except that the discussion of an individual's judicial philosophy is appropriate if conducted in a manner which does not suggest to a reasonable person a probable decision on any particular case.
- (2) A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office... .

Service as a delegate to a political party convention would violate both Canons 4 and 5. Delegates not only may select candidates to other offices, but they also adopt the party or convention platform. The platform contains positions on numerous issues that come before judges of

all courts, criminal, civil, and family.

Service as a member of a state party executive committee would also violate Canons 4 and 5. The political parties support candidates and positions on issues, which a judge cannot do.

Opinion 53C is hereby withdrawn.

MAY A JUDGE PRESIDE IN A CASE WHERE THE COUNTY JUDGE APPEARS AS AN ATTORNEY?

Ethics Opinion 260 (2000)

QUESTION: Is it appropriate under the Code of Judicial Conduct for a county court at law judge to preside over cases where the county judge appears as an attorney?

ANSWER: No, Canon 2A says that a judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Furthermore, Canon 1 states that a judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary is preserved. A county court at law judge presiding over cases where the county judge acts as an attorney would violate these two canons. The county judge has administrative authority (*i.e.*, budget approval, etc.) over all county departments and divisions, including the county courts at law. Canon 6B(3) authorizes the county judge to practice law in this court. The county court at law judge should be mindful of the appearance of impropriety. The practice of law by the county judge in this judicial forum may create the appearance of partiality and may call into question the integrity and independence of the judiciary.

**MAY A BAIL BONDSMAN SERVE
AS A MUNICIPAL JUDGE?**

Ethics Opinion 261 (2000)

QUESTION: Can a city appoint a part-time bail bondsman as an alternate municipal court judge? The part-time position does not receive a salary, but is paid a pro rata payment for the days worked. The alternate judge will not bail out any defendants with whom he has come in contact as a judge.

ANSWER: Yes, Canon 4A states that a judge shall conduct all of the judge's extra-judicial activities so that they do not (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or (2) interfere with the proper performance of official duties.

Canon 4D(2) and 4D(3) which restrict activities of judges are not applicable to municipal judges. Canon 4I does apply to all judges and it states that:

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

Whether the municipal judge is an alternate judge or the chief judge is not material, neither is the method of compensation. When a person acts as a judge all other activities (including occupations) are considered "extra-judicial activities." The concern would be that the alternate judge, acting as a magistrate, might appear to set bonds in a way which would result in lower payments to his competitors and further, since the alternate judge is also a bail bondsman, defendants might use the alternate judge as a surety under the impression that they

would get better treatment.

The bondsman can act as a municipal judge provided he disqualifies himself if: (i) he is hearing a matter involving a person for whom he has acted as surety, or (ii) the compensation received from the extra-judicial activity of issuing bail bonds gives the appearance of influencing his performance or otherwise gives the appearance of impropriety.

**IS IT APPROPRIATE FOR A
JUDGE TO ATTEND A LAW FIRM
FUNCTION ATTENDED BY
CLIENTS, PROSPECTIVE
CLIENTS AND/OR EMPLOYEE
RECRUITS?**

Ethics Opinion 262 (2000)

QUESTION: May a judge present a legal overview of a particular type case that is handled in the judge's court to an in-house law firm seminar attended by lawyers from the firm, its clients and prospective clients? Does it matter whether the law firm currently has a case pending?

QUESTION: May a judge attend a law firm function where only attorneys from that firm, invited clients, and legal recruits attend? May a judge participate in a law firm's attorney recruitment program?

ANSWER: No to both questions. Such activities would violate Canon 2B which provides that "A judge should not lend the prestige of judicial office to advance the private interest of the judge or others; nor shall a judge nor permit others to convey the impression that they are in a special position to influence the judge."

By presenting a legal overview of a case to an in-house law firm seminar attended by lawyers from the firm, its clients and prospective clients, the judge would not only be lending the

prestige of her judicial office to advance the interest of that law firm, the judge would also be indirectly allowing the law firm to convey the impression to its clients and prospective clients that the firm has a special position of influence with the judge. It does not matter whether the law firm currently has a case pending in the judge's court or not.

By attending the law firm's function where only attorneys from that firm, invited clients and legal recruits attend, the judge would be lending the prestige of his office to advance the interest of that law firm in its attorney recruiting efforts. See also Opinion 194, Opinion 39 and Canon 4D(4)(b).

**DOES THE CODE PERMIT *EX
PARTE* COMMUNICATION
BETWEEN AN APPELLATE
JUDGE AND A TRIAL JUDGE?**

Ethics Opinion 263 (2000)

QUESTION: Does the Code of Judicial Conduct permit an *ex parte* communication between an appellate judge and a trial judge regarding a pending appeal from the trial judge's court?

ANSWER: No, such a communication is clearly prohibited by the Code of Judicial Conduct. The list of prohibited *ex parte* communications found in Canon 3B(8) is not an exclusive list of inappropriate *ex parte* communications by judges. Canon 3 requires that a judge perform his/her duties impartially and requires that every person who is legally interested in a proceeding the right to be heard. To allow a trial and appellate judge to communicate *ex parte* regarding an appeal from the trial judge's court would clearly violate these requirements. The consultation between judges that is permitted in Canon 3 are conversations between judges regarding the law

and its application where neither judge has an interest in the outcome of the litigation being discussed.

DOES THE CODE OF JUDICIAL CONDUCT PERMIT A JUDGE'S RELATIVE TO ACT AS A CASA VOLUNTEER?

Ethics Opinion 264 (2000)

QUESTION A: Is it permissible for a judge to appoint a person within the third degree of consanguinity as a CASA volunteer in a case in the judge's court?

ANSWER A: No. It is not permissible for a judge to appoint a person within the third degree of consanguinity as a CASA volunteer in a contested case to be heard by the judge. Canon 2 requires a judge to avoid impropriety and the appearance of impropriety in all of the judge's activities. It is the responsibility of a CASA volunteer to advocate the position of a child in a lawsuit. It seems apparent that the judge's impartiality would be questioned if a close family member of the judge appeared in a contested matter before the judge.

QUESTION B: Is it permissible for a judge's family member to serve as a CASA volunteer so long as the activity does not have a significant potential for requiring the volunteer to testify in court?

ANSWER B: Yes. As long as the judge's close relative is not testifying or in a position to have an *ex parte* communication with the judge about a specific case, it is appropriate.

MAY JUDGE PARTICIPATE ON A MEDIA RESPONSE TEAM?

Ethics Opinion 265 (2000)

QUESTION: May a judge participate on a media response team whose job it is to respond to negative or inaccurate media stories about the legal profession, the judiciary and the courts?

ANSWER: No. Canon 3B(10) prohibits a judge from publicly commenting on pending litigation. Participation in this group would inevitably entail comment about pending litigation. A judge cannot do something as part of a group which he/she cannot do as an individual

MAY THE SENTENCING JUDGE MAKE A RECOMMENDATION TO THE BOARD OF PARDONS AND PAROLES?

Ethics Opinion 266 (2000)

QUESTION: May a judge make a recommendation for commutation of sentence pursuant to the Rules of the Texas Board of Pardons and Paroles? In relevant part the Texas Administrative Code, [Title 37, Part 5, Chapter 143, Subchapter E, Rule 143.52 Commutation of Sentence, Felony or Misdemeanor], states that the board will consider recommending to the governor a commutation of sentence upon a request accompanied by the written recommendation of a majority of the trial officials. Trial officials are defined among others as the judge in the court of offense, conviction and release.

ANSWER: Yes, any recommendation made by the judge would be in his/her official capacity and therefore permissible. See Opinion 146 which by implication would allow this official activity.

MAY A JUDGE EMPLOY A CANDIDATE FOR JUDICIAL OFFICE?

Ethics Opinion 267 (2000)

QUESTION: May a sitting judge hire in a staff position a lawyer who is a candidate for judicial office?

ANSWER: No. The judge would violate Canon 2A and 2B and Canon 5(3). Canon 2A requires a judge to promote public confidence in the integrity and impartiality of the judiciary. Canon 2B prohibits lending the prestige of judicial office to advance the private inter-

est of others. Canon 5(3) prohibits a judge from making a public endorsement of a candidate for public office.

A lawyer running for judicial office must comply with the Code of Judicial Conduct (RPC 8.02(b) and Canon 6G(1)). While these rules set the standard for expected conduct of the sitting judge and the candidate, the rules do not alleviate the appearance to the public that the sitting judge holds the candidate in high esteem or the judge would not have hired the candidate. The judge should avoid the appearance of lending his/her endorsement to a political candidate.

The result would be different if a staff attorney for a judge became a candidate some time after being hired.

DOES THE CLOSE PROXIMITY OF COUNTY ATTORNEY'S OFFICE AND JUDGE'S OFFICE GIVE AN APPEARANCE OF INSTITUTIONAL BIAS AND PREJUDICE?

Ethics Opinion 268 (2000)

QUESTION: In the portion of the courthouse where mental commitments are heard, the offices for the county attorney and the judge are right next door to each other and opposite the holding area for patients. There is no office provided for the attorneys for the proposed patients. Does this layout create an appearance of an institutional bias and prejudice in favor of the state?

ANSWER: No, although this is not an ideal office layout, it is understood that county commissioners are responsible for assigning office space in the courthouse and not judges. It is the position of the committee that reasonable people understand the practicalities of the often less than perfect office space allocated to government employees. Close proximity of the two offices alone does not create an appearance of institutional bias and prejudice.

FOR YOUR COURT

RECORDS RETENTION PROGRAM

Has your court established its records retention program? As stated in Local Government Code, Section 203.041(a), each local government must develop a records control schedule, and file the schedule on or before January 4, 1999 with the director and librarian of the Texas State Library and Archives Commission. Municipal court records are part of what a city must include in the submitted schedules, and in the record inventory and retention plan. Despite the long past deadline, many municipal courts are not in compliance. Of the 1188 city governments in Texas, 437 have not filed a records control schedule, or have not adopted the lower courts schedule. (That's 37% in non-compliance.)

TMCEC recommends that every municipal court judge (presiding) and clerk (or court manager and court administrator) check to make sure that its court has adopted a retention schedule, and is in compliance with state law. Questions about records management can be addressed to Kim Scofield, Government Records Consultant, at the Texas State Library and Archives Commission (State and Local Records Management Division, Box 12927, Austin, Texas 78711-2927 or call 512/452-9242). Ms. Scofield has been making presentations at all TMCEC seminars in FY 01. A variety of publications are available upon request, including model policies,

practical bulletins on microfilm standards, electronic records and inventory/appraisal of records, records schedule (request Local Schedule LC for Justice & Municipal Courts), forms and a newsletter.

LEGISLATURE ON-LINE

The 77th Texas Legislature is in session until May 28, 2001, though the deadline for filing bills was March 9. Over 200 bills have been filed that effect the operations of municipal courts in the areas of magistrate duties, court costs, fine collection plans, driving safety courses, teen court, removal of judges, and offenses/penalties. Judges and court support personnel who are interested in following the progress of bills filed may do so by using the Internet. The Texas Legislative Council offers free access to the text of proposed laws, lists of committee hearings, bill

summaries and the votes at the various stages of the legislative process. Log on at: <http://www.capitol.state.tx.us/capitol.htm>.

LAW DAY: MAY 1, 2001



This year's theme, "Protecting the Best Interests of Our Children," marks the first time in the history of Law Day that an emphasis has been placed on the

role of the law, lawyers, and the courts in addressing the needs of children and their families. The American Bar Association has prepared an extensive guide to help with Law Day planning. The guide contains timelines, lesson plans, awards, contests, ideas for reaching diverse groups, and order forms for balloons, posters, buttons, coffee cups, and instructional materials. To order the *Law Day 2001 Planning Guide*, go on-line:

Address: <http://www.capitol.state.tx.us/capitol.htm>

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Texas Legislature Online

Putting the Texas Legislature on Your Desktop

- House of Representatives**
Speaker of the House, Calendars, Journals, Room Schedules, House Rules, House Research Organization
- Senate**
Lieutenant Governor, Calendars, Journals, Room Schedules
- Legislative Information**
Dates of Interest, Deadlines for Action, Legislative Process, Glossary
- Legislative Resources**
Texas Statutes, Texas Constitution, Index to Sections Affected, TLC Drafting Manual
- State Agencies**
Texas Legislative Council, Legislative Budget Board, Legislative Reference Library

Session Times
House: Reconvenes at 10:00 am Thursday, March 4, 2001
Senate: Reconvenes at 1:00 pm, Local Calendar, 11:00 am, session Thursday, March 9, 2001

Bill Information **Video Broadcasts**
Bill Number: House Chamber Broadcast
Senate Chamber Broadcast

Send comments and suggestions to Web Administrators

www.lawday.org or call: 800/285-2221. Materials must be ordered by April 11, 2001 to guarantee Law Day delivery.

TRAFFIC COURT TECHNOLOGY CONFERENCE

The American Bar Association (ABA) Judicial Division will host the Traffic Court Technology 2001 Conference in Seattle, March 28-31, 2001, with support from the National Highway Traffic and Safety Administration. The program will address technology's impact on various aspects of the criminal justice system, highlighting information and issues in drug and alcohol pharmacology and testing, and photo and video enforcement. A mock trial concludes the conference.

TMCEC's own Program Attorney & Deputy Counsel, Ryan Turner, will be attending to scout the conference. For members of the ABA Judicial Division's National Conference of Special Court Judges, the registration fee is \$225. The regular rate is \$275. For information and registration, contact ABA Judicial Division by fax at 312-988-5709 or 541 N. Fairbanks Court, Chicago, IL 60611. Hotel reservations must be made directly with the Renaissance Madison at 800/278-4159. Make reference to the Judicial Division of the Traffic Court Technology Program to receive the special room rate of \$145 for a single or double.

NCSC COURT TECHNOLOGY CONFERENCE

The National Center for State Courts (NCSC) will offer the 7th Annual Court Technology Conference in

Baltimore, Maryland, August 14-16, 2001. Over 3000 judges, clerks, computer specialists, vendors, and technology experts are expected. Through educational sessions, expert speakers, demonstrations, and interactive learning, participants will:

- Learn how courts are using technology to improve their operations, from case processing to jury management to court security.
- Learn how electronic filing, formation/systems standards, artificial intelligence, multimedia, and other technologies are changing the way courts interact with the public, attorneys, and other justice professionals.
- Learn about the legal, practical, and philosophical issues on technology in the courts.

For additional information, contact NCSC at ctc7@ncsc.dni.us or at National Center for State Courts, 300 Newport Avenue, P. O. Box 8798, Williamsburg, Virginia 23118-8798 or call 800/616-6206.

FROM THE CENTER

IMPORTANT CORRECTION/CHANGE

The last issue of the *Municipal Court Recorder* (Volume 10, No. 1) contained the Rules of Judicial Education that are promulgated for the Court of Criminal Appeals. In September 2000, the Court of Criminal Appeals modified Rule 9, *Waivers of Compliance*. This recent change to the Rules is shown below:

RULE 9. WAIVERS OF COMPLIANCE.

a. Upon receipt of the reports required by Rule 8b, the applicable Education

2001 LEGISLATIVE UPDATE

Sponsored by the Texas Municipal Courts Education Center

What: A six-hour seminar on recent legislative changes of importance to the municipal courts. (Does not qualify for mandatory judicial credit for judges, but does qualify for credit in the clerk certification program.)

When: July 27, 2001 August 6, 2001

Where: Doubletree Hotel Austin * 6505 IH 35 Austin, Texas 78741 512-454-3737 Register by: July 1, 2001
Omni Dallas Park West * 1590 LBJ Freeway Dallas, Texas 75234 972-869-4300 Register by: July 6, 2001

* Hotel rooms are available for \$70 (single) a night. Please make overnight reservations directly with hotel; TMCEC will NOT pay for hotel accommodations.

Who: Municipal Court Judges, Clerks, Court Administrators and Prosecutors

Cost: \$50 (includes course materials and lunch)

Checks only - no cash. Make checks payable to TMCEC.

Program: New laws from the 77th Legislative Session affecting municipal court practice will be discussed. Emphasis will be on changes made to the Code of Criminal Procedure, the Penal Code, and the Transportation Code. Magistrate issues and the processing and handling of juvenile offenders in municipal court will also be covered

Call the Texas Municipal Courts Education Center (1-800-252-3718).

Committee will advise the named judges of the deficiency. Within 30 days of the receipt of such notice, the judge may submit a statement of the reasons that prevented compliance. Thereafter, unless the applicable Committee grants a waiver for good cause shown, it will report the name of the judge to the Court of Criminal Appeals by November 1.

b. The Court of Criminal Appeals will forward to the State Commission on Judicial Conduct names of all judges who were determined to be delinquent in continuing judicial education hours. ~~send a follow-up letter to each judge reported by the grantee, requiring a written response within 30 days. An attempt will be made to contact a judge by phone if they fail to respond to the letter.~~

c. The Court of Criminal Appeals will require a written statement from each judge that they did not serve during the reporting year, or, had served but are no longer serving.

d. A judge who challenges their delinquent status will be granted a 14 day extension by the Court and referred to the grantee for reconciliation. A judge who exceeds the 14 day extension will be reported to the Commission on Judicial Conduct as delinquent.

e. When reconciliation with the grantee is completed, the grantee will report to the Court of Criminal Appeals in writing of their final determination of the judge's status.

f. ~~A final list of all judges determined to be delinquent will be submitted to the Commission on Judicial Conduct. Subsequently,~~ Thereafter, neither the grantee nor the Court of Criminal Appeals will communicate with the judge as to their status except to refer them to the Commission on Judicial Conduct.

g. The Court of Criminal Appeals will notify grantees as to action taken by the Commission on Judicial Conduct regarding the final list of delinquent judges.

TMCA ANNUAL MEETING

The Annual Meeting of the Texas Municipal Courts Association (TMCA) will be held in Reno, Nevada, June 21-23, 2001. The program will be offered in conjunction with The National Judicial College and will offer a Legislative Update on changes passed by the 77th Texas Legislature. The host hotel will be the Reno Flamingo Hilton (255 North Sierra Street, Reno, Nevada 89601). Participants are responsible for making their own hotel reservations by calling 800/648-4882. A limited number of rooms at the \$55 rate will be held for TMCA members until June 6, 2001.

Why travel to Reno? This conference will offer attendees an opportunity to use and evaluate the facilities of The National Judicial College, often called the premier provider of judicial education for trial judges in this country. The registration fee is \$95, and covers all educational sessions, the President's Reception, and the Association's Annual Dinner and Banquet, which includes a show, in the Flamingo Room. Additional banquet/show tickets may be purchased for \$40 each. A registration form was sent in February to all municipal courts and TMCA members. The registration form and questions should be sent to TMCA, c/o Robert Richter (Treasurer), 1350 NASA Road One, Suite 200, Houston, Texas 77058-3165.

BENCH BOOK FOR ASSOCIATE JUDGES

Each presiding municipal court judge in Texas was recently sent a set of the latest versions of the *TMCEC Bench Book* and *Forms Book*. Additional copies may be ordered from TMCEC for \$20 for the *Bench Book* and \$15 for the *Forms Book*, shipping included. Checks should be made payable to TMCEC. Since many of the larger municipal courts have more than one judge, TMCEC is able to offer additional copies of the *Bench Book* to these

TMCEC Bench Book/Forms Book Order Form

Name of Court: _____

Address: _____

Telephone Number: _____

Yes, our court requests additional copies of the TMCEC Judge's *Bench Book* for the associate judges that work in our court. Please send us _____ copies that will be given to the judges named below. (Attach an additional sheet with names if more space is required.)

Name and Title

Yes, our court would like the following materials on CD-ROM or 3.5" diskette:

Qty	Check one	
___ Forms Book	<input type="checkbox"/> CD-ROM	<input type="checkbox"/> PC Diskette
___ Bench Book	<input type="checkbox"/> CD-ROM	<input type="checkbox"/> PC Diskette

Name of Presiding Judge: (please print) _____

Signature of Presiding Judge: _____

Date: _____

Return by mail or fax to: TMCEC
1601 Rio Grande, Suite 550, Austin, TX 78701
FAX 512/435-6118

associate judges at no charge. The presiding judge should return the coupon shown on this page to order additional books for associate judges and indicate their names and position.

TMCEC has this material available on CD-ROM and 3.5" diskette (in PC format only). Please use the form on this page to order these materials (one per court) at no charge. Both the CD-ROM version and the diskette are in Microsoft Word version '97. Please check the TMCEC web site [www.tmcec.com] in mid-summer for the online version of the *Bench Book*.

BENCH BOOK & QUICK REFERENCE GUIDE UPDATE

In a recent case from the Texas Court of Criminal Appeals [*Paulson v. State*, 28 S.W.3d 570 (Texas Crim. App. 2000)], the Court ruled that a verbatim reading of a jury instruction defining reasonable doubt was no longer required. This definition, commonly referred to as *Geesa*, had

been required in all criminal courts in the charge to the jury [*Geesa v. State* 820 S.W.2d 154 (Tex. Crim. App. 1991)]. TMCEC has modified *Chapter 8 - Trial Proceedings* in the *TMCEC Bench Book* to reflect this change. If you would like copies of the revised pages, please call the Center (800/252-3718). There is no charge for this handout.

Also, judges are advised to strike through the lines that refers to *Geesa* in the *TMCEC Quick Reference Guide*.

WELCOME NEW STAFF TO THE CENTER

The Texas Municipal Courts Education Center is pleased to announce the recent addition of two new members to the Center's team.

Jo Dale Bearden has come on board as Program Coordinator; she will oversee the Bailiff/Warrant Officer's Schools. She brings a criminal justice background to the staff. Graduating from St. Edwards University in Austin - like Program Attorney & Deputy Counsel Ryan Turner - with a BA in

Criminal Justice in 1998, she went on to earn a Masters of Science in Criminal Justice from Southwest Texas State University, San Marcos in 2000. She has practical experience in the area of juvenile justice. Jo Dale is an avid NASCAR fan and is commuting from San Marcos. Her knowledge and enthusiasm have already been of benefit to the staff.

Elizabeth Price has agreed to a position as Projects Coordinator; she will work with our publications, training videos, and other projects. Originally from Dallas, she has made her home in New Orleans and Los Angeles before recently relocating to Austin. She graduated from Tulane University with a Bachelor of Arts in English in 1996. Elizabeth has a fascinating employment and academic history in the areas of editing, writing and the performing arts. Her expertise and creativity will be put to good use at the Center.

Please welcome these new additions, and seek out Jo Dale and Elizabeth at our schools.

TMCEC FY2001 SCHEDULE

12-HOUR JUDGE AND CLERK PROGRAMS

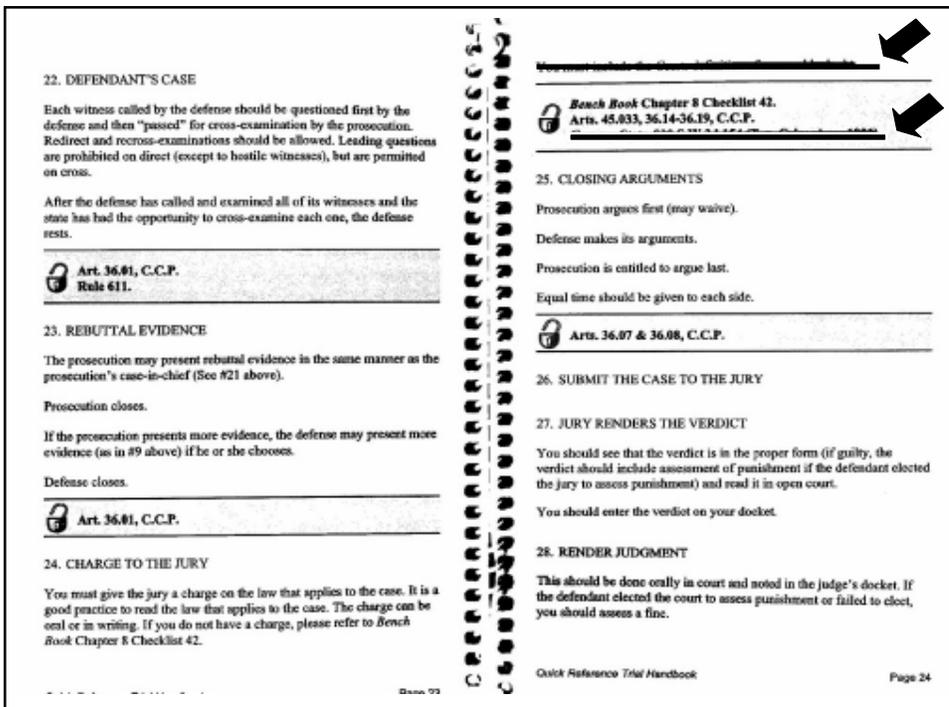
April 5-6, 2001
Holiday Inn Park Plaza
3201 Loop 289 South
Lubbock, TX 79423
806/797-3241

April 26-27, 2001 Clerks
April 30 - May 1, 2001 Atty Judges
May 2-3, 2001 Non Atty Judges
Walden Resort South Padre Island
500 Padre Boulevard
South Padre Island, TX 78597
956/761-6511
Registration Deadline: 4/2/01

June 7-8, 2001
Hilton Midland Towers
117 West Wall Avenue
Midland, TX 79701
915/683-6131

Registration Deadline: 4/30/01

Schedule continued on page 24



**TEXAS MUNICIPAL COURTS EDUCATION CENTER
2000-2001 REGISTRATION FORM**

Program Attending: _____ Program Dates: _____

Judge Clerk Court Administrator Bailiff/Warrant Officer Prosecutor

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

Last Name: _____ First Name: _____ MI: _____

Social Security #: _____ Male/Female: _____

Date Appointed/Elected/Hired: _____ Years Experience: _____

[city]

[date]

HOUSING INFORMATION

TMCEC will make all hotel reservations from the information you provide on this form. TMCEC will pay for a single occupancy room at all seminars: four nights at the 32-hour seminars, three nights at the 24-hour seminars/assessment clinics and two nights at the 12-hour and 16-hour seminars. To share with another seminar participant, you must indicate that person's name on this form.

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

Arrival date: _____ Smoker Non-Smoker

COURT MAILING ADDRESS

It is TMCEC's policy to mail all correspondence directly to the court address.

Street: _____ City: _____ Zip: _____

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

Primary City Served: _____ Other Cities Served: _____

Attorney Non-Attorney Full Time Part Time

Status: Presiding Judge Associate/Alternate Judge Justice of the Peace Mayor Bailiff

Court Clerk Deputy Clerk Court Administrator Warrant Officer

Prosecutor (A registration fee of \$250/\$100 must accompany registration form.)

Other: _____

I certify that I am currently serving as a municipal court judge, city prosecutor or court support personnel in the State of Texas. I agree that I will be responsible for any costs incurred if I do not cancel ten (10) working days prior to the seminar. If I have requested a room, I certify that I live at least 30 miles from or must travel at least 30 minutes to the seminar site. Payment is required ONLY for the prosecutors' program, joint juvenile conference, assessment clinics, and legislative updates; payment is due with registration form.

Participant Signature _____

Date _____

TMCEC • 1601 Rio Grande, Suite 550 • Austin, TX 78701 • FAX 512/435-6118

ALTERNATIVE JUDICIAL EDUCATION

Experienced municipal court judges who have completed two years of TMCEC courses may opt to fulfill the 12-hour mandatory judicial education requirements for 2000-2001 by attending a course offered by an approved continuing legal education provider. The accredited providers are the ABA Traffic Seminar, American Academy of Judicial Education, The National Judicial College, State Bar of Texas Professional Development Program, Criminal Defense Lawyers Project, Harvard Law School, Houston Law School and Foundation, Texas Juvenile Probation Commission, Texas Municipal Courts Association, and the Texas Justice Courts Training Center. The course must relate to the jurisdiction of the municipal courts and be at least 12 hours in length. Judges may only "opt-out" every other year. Judges must complete an intent form prior to April 30, 2001 or they will be required to attend a TMCEC course. If you have questions, please contact Hope Lochridge at the Center (800/252-3718).

TEXAS MUNICIPAL COURTS EDUCATION CENTER 2000-2001 INTENT TO ATTEND AN ALTERNATE PROGRAM CONTINUING JUDICIAL EDUCATION FOR MUNICIPAL COURT JUDGES

INTENT FORM

(To be completed before you have attended an approved alternative course. This is to ensure that the course meets the requirements. Once reviewed by the TMCEC Executive Director, a letter of approval will be sent to the judge. Upon completion of the approved course, the judge should send an affidavit or certificate documenting attendance.)

Social Security Number [required]: _____

Full Name: _____

Appointment Date: _____ Telephone Number: _____

Court Address: _____

Sponsor _____

Name of Program _____

Date of Program _____

of Hours _____

Date _____

Signature _____

Deadline to return form to Texas Municipal Courts Education Center: April 30, 2001

Return form to: TMCEC • 1601 Rio Grande, Suite 550 • Austin, TX 78701 • or send by FAX 512/435-6118

12-HOUR SPECIAL PROGRAMS FOR JUDGES

LEGISLATIVE UPDATE PROGRAMS

24/32-HOUR PROGRAM FOR NEW NON-ATTORNEY JUDGES AND CLERKS

July 9-13, 2001 Judges
July 10-13, 2001 Clerks
Holiday Inn Austin South
3401 South IH-35
Austin, TX 78741
512/448-2444
800/465-4329
Registration Deadline: 6/14/01

16-HOUR BAILIFF/WARRANT OFFICER PROGRAMS

March 27-28, 2001
Adams Mark Hotel Houston
2900 Briarpark Drive
Houston, TX 77042
713/978-7400

June 18-19, 2001
Crowne Plaza North Dallas/Addison
14315 Midway Road
Addison, TX 75001
972/980-8877
Registration Deadline: 5/23/01

March 27-28, 2001 Judges' Scenario School
Adam's Mark Hotel Houston
2900 Briarpark Drive
Houston, TX 77042
713/978-7400

April 10-11, 2001 Low Volume Courts
Hilton College Station Conference Center
801 University Drive East
College Station, TX 77840
979/693-7500

June 18-19, 2001 Judges' Scenario School
Crowne Plaza North Dallas/Addison
14315 Midway Road
Addison, TX 75001
972/980-8877
Registration Deadline: 5/23/01

12-HOUR PROSECUTOR/COURT ADMINISTRATOR PROGRAMS

June 28-29, 2001
Harvey Hotel Plano
1600 N. Central Expressway
Plano, TX 75074
972/578-8555
Registration Deadline: 6/1/01
Registration Fee for Prosecutors:
\$250 with housing / \$100 without housing

July 27, 2001
Doubletree Hotel Austin
6505 IH-35 North
Austin TX 78752
512/454-3737
Registration Deadline: 7/1/01
\$50 Registration Fee

August 6, 2001
Omni Dallas Hotel Park West
1590 LBJ Freeway
Dallas, TX 75234
972/869-4300
Registration Deadline: 7/6/01
\$50 Registration Fee

LEVEL III ASSESSMENT CLINICS FOR CLERK CERTIFICATION

May 18-20, 2001
Nassau Bay Hilton
3000 NASA Road One
Houston, Texas 77058
(281) 333-9300
\$100 Program Fee

TEXAS MUNICIPAL COURTS EDUCATION CENTER
1601 RIO GRANDE, SUITE 550
AUSTIN, TX 78701-1149
www.tmcec.com

Bulk Rate
U.S. Postage Paid
Taylor, TX
Permit No. 8

TMCEC MISSION STATEMENT

To provide high quality judicial education, technical assistance, and the necessary resource material to assist municipal court judges, court support personnel, and prosecutors in obtaining and maintaining professional competence.

Change Service Requested