

# The Recorder

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## CHASING OUR TAILS: PROBLEMS IN THE LAWS REGARDING DANGEROUS DOGS

By Katie Tefft  
Program Attorney, TMCEC

We've all heard the joke about the dog chasing the mailman. But when Fido gets feisty, it's no laughing matter. According to the Centers for Disease Control and Prevention, "man's best friend" bites approximately 4.7 million Americans each year. One in five victims requires medical attention for their injuries, and sadly, an average of 16 people die from dog attacks each year.<sup>1</sup>

This article is Part II in a series about animal issues seen in municipal courts. Part I, printed in the January

2011 issue of *The Recorder*, looked at humans who are a danger to animals and focused on the civil cruelly-treated animal hearing under Chapter 821 of the Health and Safety Code.<sup>2</sup> This part will address dogs that are a danger to humans and will examine the laws of a municipal court's civil jurisdiction over dangerous dog hearings under Chapter 822 of the Health and Safety Code.<sup>3</sup>

An unscientific polling of the TMCEC listservs showed that most municipal courts handling civil animal hearings see dangerous dog

cases rather than cruelly-treated animal cases. The volume of these cases, however, is still unknown. Whether your city handles these cases, or they get filed in the county or justice court, it is important for judges, clerks, prosecutors, city attorneys, city officials, animal control officers, and law enforcement officers to understand these dangerous dog proceedings. Unfortunately, the law gives little guidance as to

*Chasing Our Tails continued pg 7*

## INTERNET RESEARCH AND COMMUNICATION BY JURORS

By Mark Goodner  
Program Attorney & Deputy Counsel, TMCEC

"We live in an era when access to information is ubiquitous. We are used to having a question cross our mind and checking for the answer. We do it without thinking. And jurors do too."<sup>1</sup>

Thanks to the internet, we no longer have to wait until the 10 o'clock news or the morning paper to find

out the score of the big game or the outcome of the election. With a few clicks of the mouse and strokes on the keyboard, we can usually find answers to our queries in mere moments. We are so connected to and through the internet and so accustomed to the immediate access to extensive information

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## AROUND THE STATE

### TMCA ANNUAL MEETING

The Annual Meeting of the Texas Municipal Courts Association will be held in Austin, June 16 – 18, 2011 at the Omni Southpark Hotel (512.448.2222). There will be educational sessions for judges and clerks beginning Thursday at 1:30 p.m. though Friday at 4:00 p.m. Although not approved for credit toward mandatory judicial education for municipal judges, the program will offer CLE credit for attorneys and certification credit for court clerks. The annual business meeting will be held at 9:00 a.m. on Saturday, June 18th. Register by May 25, 2011. For more information, contact Judge Steve Williamson, TMCA Vice President (steven.williamson@fortworthgov.org).

### FROM THE EXECUTIVE DIRECTOR

Dear Judges and Clerks:

The judicial education grant to TMCEC from the State Legislature (via The Texas Court of Criminal Appeals) is likely to be decreased for the next two years by 20 percent. The TMCEC Board of Directors, Education Committee, and staff members are looking at ways to conserve funds, as well as applying to TxDOT for grant funding.

Although we will not know until June 2011 what the appropriation will be, it is highly likely that there will not be sufficient grant funding to offer single rooms at TMCEC seminars at no additional charge, nor will there likely be funding to distribute at no charge the revised book of statutes, a/k/a "The Brick" or the *Texas Criminal and Traffic Law Manual*, published by LexisNexis.

If you are in your budget process, please consider budgeting for an additional \$50 per night for a hotel room at TMCEC seminars IF you and your staff intend to request a single room rather than double occupancy. Also, please budget for the codebook at approximately \$40 per book. Books may be ordered from <http://www.lexisnexis.com/>, as well as from the West Group.

We hope to be able to continue to offer high quality judicial education to all members of our constituency.

Thank you,  
Hope Lochridge  
TMCEC Executive Director



## FROM THE GENERAL COUNSEL

By Ryan Kellus Turner  
General Counsel & Director of Education, TMCEC

### Judges in the Capitol Building?

With less than a week remaining, the 82nd Regular Texas Legislature is high gear.

Judges, were you involved in the legislative process this session? In the event of special session, or in a future regular session, do you feel prepared to participate in the legislative process?

While the role of the judiciary is clear as it pertains to legislation enacted into law, it is less clear during the time that the Legislature is in session. While some judges may simply prefer to leave it to the “experts” and have no part in the legislative process, other judges do not become involved because they feel stymied or ambivalent for ethical reasons.

Unless you are a judge who relishes the surprise when new laws go into effect on September 1st, there is no reason to shy away from the legislative process. Furthermore, you are under no ethical constraint. To the contrary, members of the Texas judiciary are expressly allowed to engage in activities to improve the law. Canon 4B states “A judge may speak, write, lecture, teach, and participate in extra-judicial activities concerning the law, the legal system, and the administration of justice and non-legal subjects, subject to the requirements of this Code.”

An altogether different issue is the political implications of supporting, opposing, or remaining silent on a legislative issue. Like it or not, judges in Texas are politicians. Members of the judiciary hold the title “judge” because they are either

elected or appointed to a term of office. Accordingly, it’s wise to give thought to the implications of either taking a position or failing to take a position on a given issue. While you may think “better to be safe than sorry,” remember the other adage “No man’s life, liberty or property is safe when congress is in session.”

Legislators often welcome input from the judiciary, and for good reason. The judiciary is in the business of interpreting and applying the Legislature’s handiwork. If a bill is filed that is either ambiguous, would result in unintended consequences, or conflicts with other legal constructs, legislators would much rather be told during the legislative process than after the fact. The legislative process is designed to place proposals on display for public review and comment. Judges speak from a unique perspective that not only reflects legalities but practicalities. There is potentially a lot of distance between the Capitol building and the courtroom. In other words, written law potentially takes on an entirely different (and sometimes unintended) dynamic when applied to actual cases in the courtroom. For this reason, policymakers often appreciate being able to tap into the perspective of judges. For good reason, it often results in a better quality work product.

By the same token, during Session, judges, as members of the public, should be prepared to speak now or (potentially) forever hold their peace. Once a bill becomes law, under separation of powers, the duty of the judiciary is to interpret statutes in order to effectuate the intent of the Legislature. Interpretation of statutes

is no Rorschach test. The law does not allow a judge to simply “see what they want to see” when interpreting a statute. Once the ink has dried on legislation, and it has become law, judicial restraint is the norm, not the exception, to statutory interpretation. Judges ought to be familiar with the “tools” for construing statutes provided by the Legislature in the Code Construction Act (Chapter 311 of the Government Code). Similarly, all judges with criminal jurisdiction should read *Boykin v. State*, 818 S.W.2d 782 (Tex. Crim. App. 1991), which is one of the more frequently cited Court of Criminal Appeals opinions on statutory interpretation. (Google has made the opinion part of its ever growing case law library. Please read it.)

### Municipal and Justice Court Issues Featured in the State of the Judiciary

A number of you have told me that you appreciate Chief Justice Wallace Jefferson of the Texas Supreme Court for making the new role that municipal and justice courts have been assigned in the state juvenile justice system a part of his State of the Judiciary address to the Texas Legislature. (TMCEC posted a link to the text of his speech on its Facebook page on March 10. You can access TMCEC’s Facebook page from the home screen of TMCEC’s website: [www.tmcec.com](http://www.tmcec.com).)

Chief Justice Jefferson emphasized action by the Legislature on juvenile justice reform. More recently, a web page summarizing the three components of the Chief Justice’s policy proposals was posted (visit, <http://www.supreme.courts.state>.)

tx.us/children/juvjustice.asp). The following is an excerpt from the webpage under the component entitled "School Misconduct – Strike a Better Balance Between School Discipline and Criminal Courts":

- Anecdotal evidence and court case volume both suggest some overuse of criminal citations for disorderly conduct or disruption of class on school grounds, and that prosecutors and judges have little or no information, other than the citation, when the child is adjudicated in court. Without affecting a peace officer's ability to make a full custodial arrest and subsequently file criminal charges but, as an alternative to a full custodial arrest, specify that the peace officer may file a sworn complaint in the municipal or justice courts. Prosecutorial discretion will propel more thorough investigations of alleged illegality by law enforcement and more careful consideration by witnesses who are the accuser. (SB 1116 by Whitmire)
- Children who commit school misconduct can be charged criminally or as conduct in need of supervision, and those who happen to be treated in the first category have criminal records that can be used against them upon reaching majority. The laws and system for criminal case file "nondisclosure" is simply not geared to accommodate the volume of juvenile cases adjudicated by municipal and justice courts and held locally. Abandon the nondisclosure construct and achieve the desired result more efficiently with the same construct used in juvenile courts: confidentiality. (HB 3695 by Gallego)

### **Judicial Leadership During the Session**

Chief Justice Jefferson is just one of many members of the Texas judiciary who are playing an active role during the legislative session.

All segments of the Texas judicial

system are represented in various ways during session (associations, lobbyists, etc.) One way that all members of the Texas judiciary are represented is through the work of the Texas Judicial Council. Created in 1929 by the 41st Legislature to continuously study and report on the organization and practices of the Texas judicial system, the Judicial Council is the policy-making body for the state judiciary that submits recommendations for improvement of the system to the Legislature, the Governor, and the Supreme Court. The Council receives and considers input from judges, public officials, members of the bar, and citizens. The municipal judges on the Council are Judge Glenn Philips of the City of Kilgore and Judge Gary Bellair of the City of Ransom Village.

The Judicial Council passed a number of resolutions of interest to municipal courts in January. Many of the resolutions have been adopted by members of the Texas House and Senate and are currently working their way through the Legislature. I encourage you to check out the list of resolutions and the progress of resolutions that have become bills. This webpage is update regularly. Visit: [www.courts.state.tx.us/tjc/legislative-proposals.asp](http://www.courts.state.tx.us/tjc/legislative-proposals.asp).

The Texas Municipal Courts Association has an active legislative program and routinely posts legislative notices on its website. The Chair of the TMCA Legislative Committee is Judge Stewart Milner of the City of Arlington. Other members of the committee include Judge Brian Holman of the City of Lewisville, Judge Odell S. Holmes of the City of El Paso, Judge Robert Kubena of the City of Hallettsville, Judge Kathleen Person of the City of Temple, Judge Glenn Phillips of the City of Kilgore, Judge Robert Richter of the City of Missouri City, Judge Mike Russell of the City of Corsicana, Judge Robin D. Smith of the City of Midland,

Judge Edward Spillane of the City of College Station, and Judge Celeste Villareal of the City of Austin. Visit: [www.txmca.com](http://www.txmca.com).

### **The Legislature at Your Fingertips**

If you are trying to get a flavor for legislative trends or want a listing of municipal-related bills, including bills pertaining to municipal courts, the Texas Municipal League does an excellent job of summarizing bills shortly after they are introduced. Visit: [www.tml.org/legis\\_updates.asp](http://www.tml.org/legis_updates.asp).

Want to watch committee or floor proceedings or search bills by key words? Even better, would you like to receive an email from the Capitol every time a bill of interest has progressed or been amended during the legislative process? The Texas Legislature Online is truly an impressive website. Maintained by the Texas Legislative Council, it provides full text access to state government research materials produced by the Texas Legislature, including: statutes, the Constitution, and the Administrative Code; bills, complete with current status, legislative history, notes, and analyses; committee calendars, schedules, and meeting minutes; House and Senate journals; legislative statistics; historical lists of membership and leadership; links to other state agencies; and much more. It also includes information about current members of the Texas Senate and Texas House of Representatives. Visit: [www.capitol.state.tx.us](http://www.capitol.state.tx.us).

### **Legislative Updates and Breaking News**

TMCEC has three legislative updates scheduled this summer: Lubbock (August 10); Houston (August 16); and Austin (August 19). Are you registered? I hope to see you there!

Keep up with breaking news as it happens by following TMCEC on Facebook and Twitter.



that it is easy to take it for granted. We may not see just how spoiled and impatient we have become. We rely on the internet for answers and use it to communicate, and it is not surprising that jurors do the same. Courts throughout the country feel the impact of jurors' use of the internet and struggle with how to deal with it:

- In Florida, a juror in a federal drug trial used the internet to research the case in violation of the judge's instructions. When this came to light, it was discovered that eight other jurors had been doing the same thing. Eight weeks into trial, Judge William J. Zloch had no choice but to declare a mistrial. "We were stunned," said a defense lawyer, Peter Raben, who was told by the jury that he had been on the verge of winning the case. "It's the first time modern technology struck us in that fashion, and it hit us right over the head."<sup>2</sup>
- In Maryland, the conviction of the Mayor of Baltimore for embezzlement was jeopardized after it was discovered that five of the jurors who convicted her were communicating among themselves on Facebook during deliberations. According to the brief filed by the defense team, as "Facebook Friends," the jurors had formed a "clique" that "altered jury dynamics."<sup>3</sup>
- In California, Frank R. Wilson, an attorney, caused a criminal conviction to be set aside, was suspended from the practice of law for 45 days, lost his job, and paid \$14,000 in legal fees after he posted his experiences as a juror in a felony trial despite the judge's warnings to jurors not to discuss the case.<sup>4</sup> In the posts, the lawyer described the judge, identified the judge by name, gave the defendant's first name, and described his alleged crimes. When the lawyer's blogging was discovered, the defendant was granted a new trial.

- In Michigan, a woman serving on the jury posted on Facebook that a defendant was guilty, but the trial had not yet ended. The judge confronted the juror the next day and replaced her with an alternate. Later at a contempt hearing, the juror was fined \$250 and ordered to write an essay on the Sixth Amendment.<sup>5</sup>
- In Arkansas, a juror used his Twitter account to say, "I just gave away TWELVE MILLION DOLLARS of somebody else's money." He later said the company would "probably cease to exist, now that their wallet is 12m lighter." The defendant learned of the tweets and moved for a new trial, arguing that the juror's tweets demonstrated that he "was predisposed toward giving a verdict that would impress his audience."<sup>6</sup> Ultimately, the request was denied as the juror's posts did not amount to improper conduct sufficient to warrant a new trial.

Jurors should decide cases by relying only on the evidence presented at trial. During trial, the jury is the exclusive judge of the facts, but it is bound to receive the law from the court and be governed thereby.<sup>7</sup> When applied under the watchful eyes of the judge, the rules of evidence and procedure ensure that the evidence presented at trial is relevant and that the law is applied properly.

Jurors who take it upon themselves to research facts or laws or to communicate with others using the internet risk being tainted by this information or communication,

threatening the integrity of the jury system. Figuring out how best to deal with this problem can be a challenge, but as Benjamin Franklin said, "an ounce of prevention is worth a pound of cure."

In December 2009, the Judicial Conference of the United States Committee on Court Administration and Case Management endorsed a set of suggested jury instructions to help deter jurors from using this technology. These jury instructions addressing the use of electronic technology among jurors are well written and may prove to be useful in your jury trials (see next page).

<sup>1</sup> Douglas L. Keene and Rita R. Handrich, *The Dark Side of the Internet in the Jury Room* available at [http://www.keenetrial.com/articles\\_15\\_2510325171.pdf](http://www.keenetrial.com/articles_15_2510325171.pdf) (Oct. 8, 2009).

<sup>2</sup> John Schwartz, *As Jurors Turn to Web, Mistrials Are Popping Up* available at <http://www.nytimes.com/2009/03/18/us/18juries.html?pagewanted=1> (March 17, 2009).

<sup>3</sup> Andrea F. Siegel, *Judges Confounded by Jury's Access to Cyberspace* available at [http://articles.baltimoresun.com/2009-12-13/news/bal-md.ar.tmi13dec13\\_1\\_deliberations-period-florida-drug-case-jurors](http://articles.baltimoresun.com/2009-12-13/news/bal-md.ar.tmi13dec13_1_deliberations-period-florida-drug-case-jurors) (Dec. 13, 2009).

<sup>4</sup> John Schwartz, *A Legal Battle: Online Attitude vs. Rules of the Bar* available at <http://www.nytimes.com/2009/09/13/us/13lawyers.html> (Sept. 12, 2009).

<sup>5</sup> Jameson Cook, *Juror Ordered to Write Essay About Sixth Amendment for Facebook Posting* available at <http://www.macombdaily.com/articles/2010/09/02/news/doc4c7fb67b5bf14990644106.txt> (Sept. 2, 2010).

<sup>6</sup> Schwartz, *supra* n.2.

<sup>7</sup> Article 36.13, Code of Criminal Procedure.



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# SUGGESTED JURY INSTRUCTIONS ON THE USE OF ELECTRONIC TECHNOLOGY TO CONDUCT RESEARCH ON OR COMMUNICATE ABOUT A CASE<sup>1</sup>

## **Before Trial:**

You, as jurors, must decide this case based solely on the evidence presented here within the four walls of this courtroom. This means that during the trial you must not conduct any independent research about this case, the matters in the case, and the individuals or corporations involved in the case. In other words, you should not consult dictionaries or reference materials, search the internet, websites, blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. Please do not try to find out information from any source outside the confines of this courtroom.

Until you retire to deliberate, you may not discuss this case with anyone, even your fellow jurors. After you retire to deliberate, you may begin discussing the case with your fellow jurors, but you cannot discuss the case with anyone else until you have returned a verdict and the case is at an end. I hope that for all of you this case is interesting and noteworthy. I know that many of you use cell phones, smart phones, the internet, and other tools of technology. You also must not talk to anyone about this case or use these tools to communicate electronically with anyone about the case. This includes your family and friends. You may not communicate with anyone about the case on your cell phone, through e-mail, Blackberry, iPhone, text messaging, or on Twitter, through any blog or website, through any internet chat room, or by way of any other social networking websites, including Facebook, My Space, LinkedIn, and YouTube.

## **At the Close of the Case:**

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry, or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.

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<sup>1</sup> Prepared by the Judicial Conference Committee on Court Administration and Case Management, December 2009.



## **2011 National Court Collections Conference – Las Vegas**

September 19-21, 2011  
Golden Nugget, Las Vegas

Registration Fee: \$429.99 member/\$529.99 non-member  
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how a dangerous dog case should be handled by anyone involved. Therefore, this article will discuss what law does exist and attempt to address those areas in which the law could (and should) be expanded.

## I. When Dogs Attack

Subchapter A of Chapter 822 of the Health and Safety Code deals with dogs that attack persons or are a danger to persons. Consider this the reactive proceeding, as the case is only heard by a court after the dog has attacked.

### A. Getting the Case to Court

Any person, including, but not limited to, the county attorney, the city attorney, or a peace officer, may file with a municipal court, justice court, or county court a sworn complaint<sup>4</sup> alleging that the dog has attacked, bitten, or mauled a person and caused the death of or serious bodily injury to that person. The allegations in the complaint must establish probable cause that the dog caused the death or serious bodily injury. Upon a showing of probable cause, the court shall issue a warrant ordering the animal control authority to seize the dog and provide for the dog's impoundment in secure and humane conditions pending a hearing.<sup>5</sup>

### B. The Dog on Trial

The court then sets the time for a hearing on the matter. The law provides that the hearing must be held within 10 days after the date the warrant is issued. The court shall give written notice of the time and place of the hearing to both the dog's owner, or the person from whom the dog was seized, and the person who filed the complaint with the court.<sup>6</sup> As a practical matter, it is helpful to schedule the hearing and put the

notice in the actual seizure order/warrant. Of course, this relies on the animal control authority to deliver the notice at the time of seizure.

It is important to note that the hearing is to be set no later than 10 days from the date the warrant is issued, not from the date the seizure takes place. There is no expiration date on the seizure warrant, but the law simply does not contemplate any lag in the issuance and execution of the seizure warrant. As it is the court's obligation to provide notice to both the animal's owner or caretaker and the complaining party, the court should be mindful of the owner's right to due process.

Presuming the seizure occurs timely and notice is given to all necessary parties, the court should proceed on the hearing to determine whether the dog caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person.<sup>7</sup> This leads to three questions that must be asked: first, did the dog attack, bite, or maul a person?; second, did the person suffer serious bodily injury or death?;<sup>8</sup> and third, did the attack, bite, or mauling cause serious bodily injury or death? The court is not making a formal determination that the dog is a "dangerous" dog;<sup>9</sup> nor should the court be concerned with determining whether the dog was provoked.

The statutes give little guidance as to how the hearing shall proceed. Any interested party, (i.e., anyone with a dog in the fight - pun intended) may present evidence at the hearing.<sup>10</sup> The owner may hire counsel to represent his or her interest in the dog. The city or county, represented by the city or county attorney, may choose to present evidence. Note that notice need not be given to all interested parties, just to the owner, or person from whom the animal was seized (preferably both), and the complainant. The judge is left

to determine who is an interested party and what rules will apply at the hearing.

The Texas Court of Criminal Appeals held in *Timmons v. Pecorino* that although the disposition hearing was held in a municipal court, historically given only criminal jurisdiction, the case to determine disposition of a dangerous dog "cannot be considered criminal," as no person is charged with or convicted of a criminal offense.<sup>11</sup> Thus, the Court of Criminal Appeals has made it clear that dangerous dog hearings under the Health and Safety Code are civil matters.<sup>12</sup> This begs the question: do the Rules of Civil Procedure apply? For that matter, do the Rules of Evidence apply? What burden of proof should apply? In lieu of repeating this discussion here, see these questions addressed in Part I in the January 2011 issue of *The Recorder*. The short answer is, we don't know.

The most daunting question as to how the hearing is handled is whether the owners have the right to a jury trial. Short answer again: we don't know. The statutes say this is a hearing. If the court finds *x*, then the court orders *y*. There is no indication of a right to jury trial. Unlike in the cruelly-treated animal realm, there is no case law that suggests owners have a right to a jury trial; there is very little case law period on dangerous dog hearings. This is a hearing to determine whether the dog caused serious bodily injury or death, not to determine whether the owner did or did not do something. Animal lawyers have claimed that owners should have the right to a jury trial; many agree because animals are property, and the Constitution provides the right to jury trials in property cases. However, the Legislature has not clarified this—neither has the Supreme Court nor Court of Criminal Appeals. This question remains a hotly debated subject.

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### C. Acquittal or Death Penalty?

Although little is clear as to what happens during the hearing, there is statutory guidance as to what happens at the conclusion of the proceeding. If the court does not find the dog caused death or serious bodily injury, the court **shall** order the dog be released to either the owner, the person from whom the dog was seized, or any person authorized to take possession of the dog.<sup>13</sup> If the court finds that the dog caused the *death* of a person by attacking, biting, or mauling, the court **shall** order the dog destroyed.<sup>14</sup> If the court finds that the dog caused *serious bodily injury* to a person by attacking, biting, or mauling, the court **may** order the dog destroyed.<sup>15</sup> The statute gives no alternative disposition options. As the court has the discretion to order destruction in cases of serious bodily injury, what if the court declines to order destruction? What happens to the dog then? The law does not say, and it does not make sense to use any of the other dispositional orders available under cruelly-treated animal hearings (i.e., give the animal to a nonprofit animal shelter or put it up for auction) as it is the dog that is a danger, not the owner.

There are five instances, however, where the court may **not** order the dog destroyed even if there is a finding that the dog caused serious bodily injury. They are: (1) when the dog was being used for the protection of a person or person's property, the attack, bite, or mauling occurred in an enclosure reasonably certain to prevent the dog from leaving and with required posted notice, and the victim was at least eight years old and was trespassing; (2) the dog was not being used for the protection of a person or person's property but the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and the injured person was at least eight years of age and was trespassing in the enclosure; (3) the attack, bite, or

mauling occurred during an arrest or other action of a peace officer while the peace officer was using the dog for law enforcement purposes; (4) the dog was defending a person from assault or a person's property from damage or theft by the injured person; or (5) the injured person was younger than eight years old and the attack, bite, or mauling occurred in an enclosure in which the dog was being kept that was reasonably certain to keep a person younger than eight from entering.<sup>16</sup> The statute fails to specify what happens to the dog when one of the exceptions is present. Presumably, the court would order the dog released to either the owner, the person from whom the dog was seized, or any person authorized to take possession of the dog.

If it is determined by the court that the dog shall be destroyed, the destruction must be performed by a licensed veterinarian, personnel of a recognized animal shelter or humane society who are trained in the humane destruction of animals, or personnel of a governmental agency responsible for animal control who are trained in the humane destruction of animals.<sup>17</sup>

A word of caution: these are civil cases. There is no “deferred disposition” option under which a judge can impose reasonable conditions. The judge's authority is clear: order the dog destroyed or order the dog released. There is no room for creativity, and municipal judges lack the authority in these proceedings to enter orders other than those authorized by law, including orders for restitution. Whereas Chapter 821 (cruelly-treated animals) contemplates ordering “court costs” be paid to compensate the city for the cost of housing the animal, Chapter 822 (dangerous dogs) does not. Therefore, judges should not be ordering restitution, payment of medical expenses, or other reasonable conditions on these cases. Nothing in Chapter 822, however, precludes a

victim from suing the owner civilly in an appropriate court (i.e., not municipal court) in tort under dog bite laws. These laws also do not preclude a district attorney from filing criminal charges under Section 822.005 against a negligent owner to hold the dog owner responsible.<sup>18</sup>

### D. No Right to Appeal the Death Penalty

Dogs that attack, bite, or maul a person and cause serious bodily injury or death are on trial for their lives. These animal hearings are the only time a municipal, justice, or county judge can impose the death penalty. This would lead most people to believe the owners would have a right to appeal the court's destruction determination. However, case law and Attorney General opinions make clear that there is no right to appeal without statutory authority.<sup>19</sup> Nothing in Chapter 822, Subchapter A grants a right to appeal. This means that a court's determination ordering destruction of the dog is final and may not be appealed. Similarly, a court's determination ordering release of the dog may not be appealed by the complainant. As such, there is no need to address in this section whether the hearing should be recorded.

### Beware of Dogs that Do Not Cause Death or Serious Bodily Injury

What if the judge agrees that the dog caused bodily injury, but it does not rise to the level of serious bodily injury as defined by Section 822.001? A dog bite that rips a child's jeans and cuts the child's leg may not require medical attention. But, what, then, should happen to the dog? The judge's hands are tied—the judge can only order destruction upon a finding of serious bodily injury or death, not just bodily injury. In this situation, one would need to go through the proper channels to formally declare the dog a “dangerous dog”. Thus, let

us turn our attention to Subchapter D, the true Dangerous Dog statutes.

## II. Dangerous Dogs

Subchapter D of Chapter 822 of the Health and Safety Code focuses on the determination that a dog is dangerous and imposes requirements for owners of dangerous dogs. Think of this subchapter as the proactive proceedings, as the requirements on owners of dangerous dogs are intended to prevent future dog attacks without jumping to destroy the dog. In many cases, it is the owner on “trial.”

Section 822.041(2) defines “dangerous dog” to mean a dog<sup>20</sup> that:

- (A) makes an unprovoked attack on a person that causes *bodily injury* and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or
- (B) commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts cause a person to *reasonably* believe that the dog will attack and cause bodily injury to that person.<sup>21</sup>

Under Subchapter D, there are three types of hearings that may occur in a municipal, justice, or county court. A word of warning: although these are three distinct proceedings, all rely on the same statutes, which can get confusing. Pay careful attention to the statutory references throughout.

### A. Determining the Dog is Dangerous

#### First Type of Hearing: Municipal

### Court as Court of Appeals

Section 822.0421 provides that an animal control authority may investigate any report of an incident defined by Section 822.041(2) (unprovoked attack causing bodily injury or unprovoked acts leading a person to reasonably believe the dog will attack and cause bodily injury).<sup>22</sup> Animal control, if it chooses to investigate, should take sworn statements from any witnesses and then determine whether the dog is a dangerous dog (meeting the above definition). If animal control determines the dog is a dangerous dog, the animal control authority shall notify the owner.<sup>23</sup> The owner is then subject to certain requirements under Section 822.042 (see below).

Once an owner is notified that the dog is a dangerous dog, the owner has just 15 days from the date of notification to appeal the determination to a municipal, justice, or county court of competent jurisdiction.<sup>24</sup> Many have claimed that this language requires the owner to appeal to a municipal court of record, or conversely, that only a municipal court of record has jurisdiction to hear this type of appeal. The Attorney General, however, has interpreted “court of competent jurisdiction” to refer to territorial jurisdiction. See Tex. Atty. Gen. Op. GA-0660 (2008). Thus, municipal courts, even if not a court of record, have jurisdiction to hear these appeals, assuming the dog resides in the city’s territorial limits. If the dog does not reside within the city, presumably, the appeal should go to the appropriate justice court or directly to the county court.

Section 822.0421(b) gives absolutely no guidance on how an appeal is to be handled by the municipal, justice, or county court. Must there even be a hearing? If there is, would the Rules of Civil Procedure apply? Would the Rules of Evidence apply? As this is technically an “appeal,” would the

Rules of Appellate Procedure apply? What is the standard of review? Is there a right to a jury trial? Or is this more of an administrative appeal in the same vein as red light camera appeals also handled in municipal courts? Short answer yet again: we don’t know. There is also nothing in the statute to govern how long the municipal court has to rule on the appeal. There was an attempt, but it appears we will not see any clarification this session in the Legislature to amend these provisions.

We do know that the municipal court cannot refuse to hear the appeal, unless the animal does not reside within the city’s limits, and the municipal court cannot transfer the appeal to a justice or county court. It is the owner who gets to determine to which court he wishes to appeal the animal control determination.<sup>25</sup>

If the municipal, justice, or county court affirms animal control’s determination, the court should reduce the decision to writing and notify the owner of that fact. This triggers requirements on the owner discussed under Section B below. If the court overrules the animal control authority’s determination, the law is silent as to what happens. Presumably, the court would order the dog be released to its owner.

### Second Type of Hearing: Municipal Court as Original Determiner

Section 822.0422 allows any person to skip reporting an incident to animal control and instead file a complaint directly with a municipal, justice, or county court for the *court* to then determine whether the dog is a dangerous dog. The hearing provided by this section can only happen in counties with population greater than 2.8 million; in counties in which the commissioners court has entered an order electing to be governed by the section; or in cities

# Dangerous Dog Hearings (Chapter 822, Health & Safety Code)

	Dog's Act that is a Danger to Persons		Requirements for Owner of Dangerous Dog / Owner Fails to Act		
	<u>Cause Person's Death</u>	<u>Cause Serious Bodily Injury to Person</u>	<u>Owner Doesn't Comply with Requirements</u>	<u>Animal Control Authority Determines Dog is Dangerous</u>	<u>822.0422 Adopted</u>
<b>Subchapter</b>	A	A	D	D	D
<b>Sections</b>	822.002, 822.003	822.002, 822.003	822.042(c), 822.0423	822.0421(b)	822.0422, 822.0423
<b>How proceeding starts:</b>	Anyone files sworn complaint in court	Anyone files sworn complaint in court	Anyone files application in court	Owner appeals animal control determination (within 15 days)	Anyone reports an incident to court
<b>Seize dog before hearing:</b>	If probable cause, yes	If probable cause, yes	Unclear		If owner does not deliver within 5 days, animal control seize
<b>Definitions:</b>	Attacked, bit, or mauled and caused death	Attack, bit, or mauled and caused serious bodily injury (defined in 822.001 as severe bite wound or ripping/tearing of muscle)	Requirements in 822.042(a) and (b)	Attack or unprovoked acts as defined in 822.041	Attack or unprovoked acts as defined in 822.041
<b>Hearing:</b>	Within 10 days of seizure warrant	Within 10 days of seizure warrant	Within 10 days of when dog is delivered by owner or seized	Does not say	Within 10 days of when dog is delivered or seized
<b>Defense:</b>	None	1 of 5 in 822.003(f)	None	None	None
<b>Court Options:</b>	- Must destroy dog - Must release dog	- May destroy dog - May not destroy dog (if have above defense) - Must release dog	- Must release dog if owner complies - Must destroy dog if owner does not comply	- Court affirms determination - Court does not affirm determination	- Must release dog if owner complies - Must destroy dog if owner does not comply
<b>Appeal from Municipal Court:</b>	No right to appeal provided	No right to appeal provided	By owner or one who filed application	By owner	By owner or one who filed application
<b>Application:</b>	State-wide	State-wide	State-wide	State-wide	- County > 2.8 million - County/city adopts

This chart was adapted from materials created by The Honorable Marian Moseley with the Coppell Municipal Court. For a copy of the associated paper "A Protocol for Conducting Dangerous Dog Hearings," visit the TMCEC OLC Webinars on Demand page for the Dangerous Dog Hearings webinar: <http://online.tmcce.com>.

in which the governing body has by ordinance elected to be governed by the section.<sup>26</sup>

A person may report an incident (unprovoked attack causing bodily injury or unprovoked acts leading a person to reasonably believe the dog will attack and cause bodily injury) directly to a municipal, justice, or county court. The court then sends notice to the owner that a report has been filed. The owner of the dog shall deliver the dog to the animal control authority no later than the fifth day after receiving this notice.<sup>27</sup> If the owner fails to deliver the dog as required, the court in which the report was filed shall issue a warrant ordering the animal control authority to seize the dog and the owner will be held responsible for paying any costs incurred in the seizure.<sup>28</sup> Regardless of whether the owner voluntarily surrenders the dog or animal control has to seize the dog pursuant to a warrant, the animal control authority shall impound the dog in secure and humane conditions until the court orders disposition of the dog.

The court shall set a hearing to determine whether the dog is dangerous. Section 822.0423 requires that the hearing be set no later than 10 days from the date the owner voluntarily delivers the dog to animal control or the date animal control seizes the dog under the warrant.<sup>29</sup> Again, it is the court's responsibility to notify both the owner of the dog, or the person from whom the dog was seized (preferably both), and the person who made the initial complaint to the court.<sup>30</sup>

Similar to the hearings conducted under Subchapter A, there is little guidance as to how the hearing should be conducted. The same questions still apply, and we still have no clear answers. The court should be mindful of the owner's right to due process; thus, the court should make sure the owner receives the required notice.

There is nothing in the statute that requires the owner to actually appear and present evidence, but the law does provide that any interested party, including the county or city attorney, is entitled to present evidence at the hearing.

The court must determine if the dog is a dangerous dog—that the dog either (1) made an unprovoked attack and caused bodily injury outside of its enclosure or (2) committed unprovoked acts outside of its enclosure that could lead the person filing the report to reasonably believe the dog would attack and cause bodily injury to that person. In making the determination, the court should be looking for whether the dog was provoked, whether the acts occurred outside of the dog's enclosure, the stability of the enclosure, whether the dog caused bodily injury, and the reasonableness of the complainant's fears of attack.

If the court does **not** find the dog is dangerous, according to the definition set forth in Section 822.041(2), the court should order the dog released to the owner. If the court determines the dog is a dangerous dog, then the court may order animal control to continue to impound the dog until the court orders disposition under Section 822.042 and the dog is either destroyed or returned to the owner. Section 822.042 deals with requirements the owner must follow within 30 days of learning that the dog is dangerous. This provision, then, allows the animal control authority to keep custody of the dog pending the 30 days to see if the owner will comply. The owner shall pay any cost or fee assessed by the city or county related to the seizure, acceptance, impoundment, or later destruction of the dog.<sup>31</sup>

The next section discusses the requirements for an owner of a dangerous dog.

## B. Requirements for Dangerous Dog Owners

Section 822.042, referenced above, lays out specific requirements for owners of dangerous dogs. Under Subsection (a), an owner must, not later than the 30th day after learning they are the owner of a dangerous dog:

- Register the dangerous dog with the animal control authority for the area in which the dog is kept (*see Section 822.043 for the laws and requirements on registration, including the \$50 annual registration fee*);
- Restrain the dangerous dog at all times on a leash in the immediate control of a person or in a secure enclosure (*see Section 822.041(4) for the definition of secure enclosure*);
- Obtain liability insurance coverage or show financial responsibility in an amount of at least \$100,000 to cover damages resulting from an attack by the dangerous dog causing bodily injury to a person and provide proof of the required liability insurance coverage or financial responsibility to the animal control authority for the area in which the dog is kept;<sup>32</sup> and
- Comply with an applicable municipal or county regulation, requirement, or restriction on dangerous dogs.

In lieu of complying, the owner may instead deliver the dog to the animal control authority, still by the 30-day deadline.<sup>33</sup>

A person learns that he or she is the owner of a dangerous dog when: (1) the owner knows of an attack causing bodily injury outside of the dog's enclosure or of unprovoked acts outside of the enclosure that lead a person to reasonably fear an attack that could cause bodily injury; (2) the owner receives notice from a municipal, justice, or county court that the court has found the dog dangerous (*see Municipal Court as Original Determiner*); or (3) the

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owner is informed by the animal control authority that the dog is dangerous (see earlier description: *First Type of Hearing Municipal Court as Court of Appeals*).<sup>34</sup>

An owner of a dangerous dog who fails to comply with these requirements may be criminally charged with a Class C misdemeanor under Section 822.045.<sup>35</sup> Additionally, the municipal court may determine the owner's failure to comply in the next type of civil hearing.

### **Third Type of Hearing: Compliance Hearing**

Section 822.042(c) provides that any person can apply to a municipal, justice, or county court alleging that an owner of a dangerous dog has failed to comply with the ownership requirements. Often the applicant will be someone in animal control or with the local government, as it would be difficult for anyone else to know the owner had failed to comply (unless of course someone has a bone to pick with the owner—no pun intended this time). Upon the application being filed, the court shall send written notice of the time and place of a hearing to the owner. Herein lies a huge hole in the statutory scheme: it is not clear when the hearing must be scheduled.

Section 822.042(c) contemplates notice and a hearing as provided by Section 822.0423. Section 822.0423 says that upon an application under Section 822.042(c), the court shall set a time for a hearing to determine whether the owner complied with the requirements. The hearing must be held not later than the 10th day after the date on which the dog is seized or delivered. The problem: at the time of application, the dog is still in the owner's custody. There is no provision granting a judge the authority to issue a warrant to seize the dog in this situation. In fact, the end result of this type of hearing is a

seizure warrant. Given the fact that courts will be chasing their tails (i.e., running in circles) trying to follow the statutory guidelines, courts should schedule the hearing no later than 10 days from the date the application is filed and send written notice of the time and place of the hearing to the owner, or person from whom the dog was seized (preferably both), and the person who filed the application immediately.

Again, there is no guidance for the hearing other than that any interested party is entitled to present evidence. The same questions apply as to what rules to follow and whether the owner is entitled to a jury trial. Section 822.042(c) simply says that if the court finds at the hearing that the owner has failed to comply, the court shall issue a warrant ordering the animal control authority to seize the dog. Thus, the court must find that (1) the owner knew he was the owner of a dangerous dog and (2) that the owner either failed to comply with the requirements or deliver the dog to animal control within 30 days of learning he is the owner of a dangerous dog. If the judge finds the owner knew and failed to comply or deliver the dog, the court shall issue the seizure warrant.<sup>36</sup> The animal control authority shall then seize the dog and provide for its impoundment in secure and humane conditions. The owner shall pay any cost or fee assessed by the city or county related to the seizure, acceptance, impoundment, or later destruction of the dog.<sup>37</sup>

### **One Last Chance**

Once the animal control authority has custody of the dog pursuant to the court's warrant, the owner has 10 more days to comply with the requirements. If the owner has **not** complied with the requirements of Section 822.042(a) by the 11th day after the date the dog is seized by or delivered to the animal control

authority, the court shall order the animal control authority to humanely destroy the dog.<sup>38</sup> If the owner **does** comply within those 10 days, the court shall order the animal control authority to return the dog to the owner.<sup>39</sup> The statute goes on to provide that the court may order the dog's destruction if the owner has not been located before the 15th day after the dog's seizure and impoundment.<sup>40</sup>

### **Criminal Liability for Owning a Dangerous Dog**

Section 822.044 creates a Class C misdemeanor offense against an owner of a dangerous dog if the dog makes an unprovoked attack on another person outside of the dog's enclosure and causes bodily injury to the other person. Dogs that cause death or serious bodily injury are handled under Subchapter A, but dogs that attack and cause injury that does not rise to the level of serious bodily injury cannot be destroyed under Subchapter A. If that is the case, and the dog has already been determined a dangerous dog, the city or county can file criminal charges against the owner. If convicted, the court may order the dog destroyed.<sup>41</sup>

### **C. Right to Appeal the Determination or Noncompliance**

Unlike hearings under Subchapter A where there is no right to appeal, decisions under Subchapter D can be appealed. An owner may appeal the municipal, justice, or county court's decision affirming the animal control authority's determination that a dog is dangerous *in the same manner as appeal for other cases from the municipal, justice, or county court*.<sup>42</sup> Likewise, an owner or the person filing the report of an incident or application that the owner has failed to comply may appeal the municipal, justice, or county court's decision that the dog is a dangerous dog or that the owner has failed to comply, respectively, *in the same manner*

as appeal for other cases from the municipal, justice, or county court.<sup>43</sup> The italicized language has caused much consternation amongst the animal law community. The *In re Loban* case, out of the Fort Worth Court of Appeals, highlighted the problem with this language when it found that there was no court to which a decision from a court of record could be appealed.<sup>44</sup> Legislation was filed to resolve this problem, but does not appear to be going anywhere.

In addition to the venue issue, many other issues remain: must the owner follow the Rules of Appellate Procedure? What must be sent up on appeal? Must a record be made in a court of record? If so, who should request one and who should pay for the transcript? Would the appeal be de novo out of a non-record court? If appealing from a decision made by a county court, would the Court of Appeals have to accept that appeal? On appeal, is the appellant entitled to a jury trial? These are just some of the many issues yet to be resolved.

Another missing link: the appeal bond. The cruelly treated animal provisions in Chapter 821 provide for an appeal bond to cover the cost of caring for any animals during the pendency of an appeal, along with strict deadlines for the final determination made by the appellate court (no more than 25 days). There is no mention of an appeal bond anywhere in Chapter 822. There are also no deadlines for the appeal. Therefore, all we know is that owners have a right to appeal, the appeal could last forever, and meanwhile, the dog is in the custody of the animal control authority at the city or county's expense.

### Final Observations

The laws addressed in this article all come from Chapter 822 of the Health and Safety Code. Section 822.047

provides that a city or county may enforce additional requirements or restrictions on dangerous dogs so long as they are not specific to a breed and are more stringent than state law.<sup>45</sup> Be sure to consult your city ordinances as well.<sup>46</sup>

Judges (and court staff) should beware: emotions tend to run high in these cases. Judges must learn to balance the desire to protect citizens with the owners' desires to keep their "best friends," and afford owners their due process without being swayed by political preferences.

There were a few animal-related bills introduced this Session that would have greatly affected the municipal court's handling of cruelly-treated animal and dangerous dog hearings. In this dog-eat-dog Legislature, however, these bills appear dead. Part III of this article, which will run in a fall issue of *The Recorder*, will propose ways to clarify this confusing area of law.

For more information log on to TMCEC's OLC and watch Judge Marian Moseley's webinar on Dangerous Dog Hearings. Simply go to <http://online.tmcec.com>, click on Webinars on Demand, and Dangerous Dog Hearings. You can also download her excellent paper "A Protocol for Conducting Dangerous Dog Hearings."

<sup>1</sup> Centers for Disease Control and Prevention Dog Bite: Fact Sheet available at <http://www.cdc.gov/HomeandRecreationalSafety/Dog-Bites/dogbite-factsheet.html> and Dog Bite Prevention site at <http://www.cdc.gov/HomeandRecreationalSafety/Dog-Bites/biteprevention.html>.

<sup>2</sup> Katie Tefft, "Give the Dog a Bone: The Criminal and Civil Side of Animal Cruelty," *The Recorder* 20:2 (January 2011).

<sup>3</sup> This article will not address dogs that are a danger to other dogs, as the only time that situation will appear in municipal court is as a criminal offense under Section 822.012 of the Health and Safety Code. For more on this, consult Subchapter B of

Chapter 822.

<sup>4</sup> Note this is not the same as a complaint filed in municipal court as the charging instrument under Chapter 45 of the Code of Criminal Procedure. This complaint is more like the Chapter 15 complaint serving as the probable cause affidavit for an arrest warrant.

<sup>5</sup> Section 822.002, Health and Safety Code. Section 822.001(1) of the Health and Safety Code defines "animal control authority" as the municipal or county animal control office with authority over the area in which the dog is kept or the county sheriff in an area that does not have an animal control office.

<sup>6</sup> Section 822.003, Health and Safety Code.

<sup>7</sup> *Id.*

<sup>8</sup> Section 822.001(2) of the Health and Safety Code defines "serious bodily injury" as an injury characterized by severe bite wounds or severe ripping and tearing of muscle that would cause a reasonably prudent person to seek treatment from a medical professional and would require hospitalization without regard to whether the person actually sought medical treatment. Note this is a different definition than the one usually used in Section 1.07(46) of the Penal Code.

<sup>9</sup> This is a formal determination made under different circumstances in Subchapter D of Chapter 822 and discussed later in this article.

<sup>10</sup> See "Give the Dog a Bone: The Criminal and Civil Side of Animal Cruelty" in the January 2011 issue of *The Recorder* for a discussion on who may be an interested party.

<sup>11</sup> *Timmons v. Pecorino*, 977 S.W.2d 603 (Tex. Crim. App. 1998). This case involved a hearing to determine the disposition of a dog who bit and caused serious bodily injury to a young girl. Evolving from a municipal court, the owners tried to appeal the destruction order to the Court of Criminal Appeals. The Court held that it had no jurisdiction over the dispute which "remains a civil matter."

<sup>12</sup> Thus these cases should be styled "*In re Dog*" and not as *State of Texas vs. Owner/Dog*. There is no defendant or prosecutor; just a respondent.

<sup>13</sup> Section 822.003(e), Health and Safety Code.

<sup>14</sup> Section 822.003(d), Health and Safety Code.

<sup>15</sup> Section 822.003(e), Health and Safety Code.

<sup>16</sup> Section 822.003(f), Health and Safety Code.

<sup>17</sup> Section 822.004, Health and Safety Code.

<sup>18</sup> See Section 822.005 of the Health and Safety Code, known as Lillian's Law (H.B. 1355, 80th Regular Legislature).

<sup>19</sup> Tex. Atty. Gen. Op. GA-0316 (2005); *In re*

*Loban*, 243 S.W.3d 827 (Tex. App.—Fort Worth 2008); *Pitts v. State*, 918 S.W.2d 4 (Tex. App.—Houston [14th Dist.] 1995) (“The right of appeal must be expressed in plain and unambiguous language and a statute may not be liberally interpreted to create that right where it does not exist.”).

<sup>20</sup> Section 822.041(3) defines “dog” as a domesticated animal that is a member of the canine family.

<sup>21</sup> Section 822.041(2), Health and Safety Code (emphasis added).

<sup>22</sup> “Animal control authority” is defined in Section 822.041(1) to be the same definition discussed under Subchapter A.

<sup>23</sup> Section 822.041(5) defines “owner” as a person who owns or has custody or control of the dog.

<sup>24</sup> Section 822.0421(b), Health and Safety Code (emphasis added).

<sup>25</sup> Tex. Atty. Gen. Op. GA-0660 (2008).

<sup>26</sup> Section 822.0422(a), Health and Safety Code.

<sup>27</sup> Section 822.0422(b), Health and Safety Code. Note that an owner who fails to deliver the dog may be criminally prosecuted under Section 822.045, a Class C misdemeanor.

<sup>28</sup> Section 822.0422(c) and (f), Health and Safety Code.

<sup>29</sup> Section 822.0423(a), Health and Safety Code.

<sup>30</sup> Section 822.0423(b), Health and Safety Code.

<sup>31</sup> Section 822.0422(c) and (f), Health and Safety Code. The governing body of the

city or county may prescribe the amount of the fee.

<sup>32</sup> Several judges have commented that it is nearly impossible to obtain this type of insurance in such a high dollar amount in such a short time period (30 days).

<sup>33</sup> Section 822.042(b), Health and Safety Code.

<sup>34</sup> Section 822.042(g), Health and Safety Code.

<sup>35</sup> The offense of failing to comply is a Class C misdemeanor, unless the person has previously been convicted of the failure to comply, in which case it is a Class B misdemeanor.

<sup>36</sup> Nothing in the statute instructs on what to do if the court finds the owner did comply. Presumably, the case would be dismissed, and the dog would never be in the city or county’s custody.

<sup>37</sup> Section 822.042(d), Health and Safety Code. The governing body of the city or county may prescribe the amount of the fee.

<sup>38</sup> Section 822.042(e), Health and Safety Code.

<sup>39</sup> *Id.*

<sup>40</sup> Section 822.042(f), Health and Safety Code. One would presume that for the court to have issued the seizure warrant, there had been a hearing and the owner would have received notice of that hearing; thus, it is bothersome to think that the dog would be ordered destroyed without the owner having ever been located.

<sup>41</sup> Section 822.044(c), Health and Safety

Code.

<sup>42</sup> Section 822.0421(b), Health and Safety Code (emphasis added).

<sup>43</sup> Section 822.0423(d), Health and Safety Code (emphasis added).

<sup>44</sup> *In re Loban*, 243 S.W.3d 827 (Tex. App.—Fort Worth 2008) (The court of appeals concluded that the owner could appeal the decision of the Grapevine Municipal Court of Record affirming the animal control authority’s determination that his two dogs were dangerous, pursuant to Section 822.0421, Health and Safety Code. One problem: because the underlying action was not a criminal action, the appellate provision of the Code of Criminal Procedure was not triggered. Furthermore, pursuant to Section 30.00014(a), Government Code, because Tarrant County did have statutory county criminal courts, Tarrant County Court at Law No. 3 did not have jurisdiction over the resident’s appeal.).

<sup>45</sup> A person who owns or keeps custody of a dangerous dog commits a Class C misdemeanor offense if the person fails to comply with an applicable city or county regulation pertaining to dangerous dogs. Section 822.045, Health and Safety Code.

<sup>46</sup> See *City of Richardson v. Responsible Dog Owners of Texas*, 794 S.W.2d 17 (Tex. 1990) for a discussion on preemption.

## CHANGE FOR FY 12

TMCEC, in order to save funds, will be going digital in FY 12, starting on September 1, 2011. It is absolutely essential that TMCEC have an accurate email address for you. The following items will no longer be sent by U.S. mail, but rather by email:

- Seminar brochures
- Seminar schedules
- Registration reminders
- Confirmation letters
- Agendas
- Hotel Information
- Legal updates
- *The Recorder*
- Notices of New Publications Available/Order Forms

If you are not computer savvy, we suggest that you ask a trusted colleague, clerk, friend, or family member to serve as your email contact. They will need to check your email account on a daily basis. Email accounts are typically made available by the city or court. If your city or court does not provide such a service, you can always get a free Gmail account at [www.google.com](http://www.google.com) (select gmail, top left hand corner of page).

Judges and clerks will receive a copy of the Academic Schedule in August 2011 that will outline the entire year’s programs and the rules and policies about participating in a TMCEC program.

If you have questions or comments, please contact Hope Lochridge, TMCEC Executive Director at [hope@tmcec.com](mailto:hope@tmcec.com) or 800.252.3718. Please send your name, title, court, and email address to [tmcec@tmcec.com](mailto:tmcec@tmcec.com).



## RESOURCES FOR YOUR COURT

### CHANGE IN OCA MONTHLY REPORTING FORM

Effective September 1, 2011, the Official Municipal Court Monthly Report form will change. Remember to go to the Office of Court Administration (OCA) website: <http://www.courts.state.tx.us/oca/required.asp> to download the form and the instructions. The new form will collect more information on active, inactive, and reactivated cases, compliance dismissals, contempt cases, drug paraphernalia cases, orders for non-secure custody, detention hearings, transfers to juvenile court, and more.

Sections 171.1 and 171.2 of the Texas Administrative Code require submission of court activity reports each month to the Texas Judicial Council by no later than 20 days after the end of the month for which statistics are reported. The monthly report is not designed to report everything that a court does, nor everything that requires the attention or time of the judge or court support personnel. Instead, the monthly report is designed to provide information required by law or needed by the judicial, legislative, and executive branches of government to make decisions regarding the jurisdiction, structure, and needs of the court system.

Questions about the changes should be directed to Sandra Mabbett at OCA at 512.463.1640 or [Sandra.Mabbett@txcourts.gov](mailto:Sandra.Mabbett@txcourts.gov). Additional information can be accessed at <http://www.courts.state.tx.us/oca/required.asp#changes2011>, including the Frequently Asked Questions sheet that is reprinted on the next page of this issue of *The Recorder*. See pages 17 & 25 of this *Recorder* for information on the webinars on the new OCA reporting requirements.

### FOR ATTORNEY JUDGES

The State Bar of Texas has changed its MCLE Rules, effective June 1, 2010. Now a minimum of 12 of the 15 hours of annual CLE must be completed through attendance at “Accredited CLE” activities. Accredited CLE activities include accredited teleconferences, webcasts, satellite, on-demand/online CLE (streaming audio/video presentations), and accredited downloadable CLE activities that have been recorded from live seminars. The remaining three hours of CLE may be completed through self-study.

Thus, now many archived TMCEC webinars (we call them *Webinars on Demand*) are accredited CLE activities. Go to the TMCEC Online Learning Center (OLC) to logon: <http://online.tmcec.com/>. An MCLE number is included so that you can self-report the hours. The MCLE rules require a different MCLE number for the “participatory or live” versus the archived webinars. Both are included on the OLC. There is no charge for registering for or claiming CLE credit for TMCEC webinars. Users will need a username and password—email [tmcec@tmcec.com](mailto:tmcec@tmcec.com) if you have misplaced yours.

### JURY INSTRUCTIONS

Sample jury instructions on the use of the internet and social media are available for use in your court. It is important to use such instructions to deter jurors from using electronic technologies to research or communicate about cases on which they serve. The incidence of juror use of devices such as cell phones or computers to conduct research or communicate with others is reportedly increasing and judges may wish to incorporate such cautionary jury instructions or post reminders in the jury room.

A statement prepared by the Judicial Conference Committee on Court Administration and Case Management is shown on page 6. It can also be downloaded from The National Judicial College: [www.judges.org/news/cip.html](http://www.judges.org/news/cip.html).

TMCEC program attorney Mark Goodner has prepared a presentation on Social Media for the judges' regional program. If you have questions, please feel free to contact Mr. Goodner at [goodner@tmcec.com](mailto:goodner@tmcec.com) or 800.252.3718. In July 2011, an audio file and course materials on this presentation will be accessible via the TMCEC website.

# FAQ ON NEW OCA REPORTING

## Municipal Court Reports Effective September 1, 2011

### 1. Do I need to go back and reclassify all of my old pending caseload into the new case categories?

For municipal courts, you are not required to recategorize pending cases, though recategorization is ideal. However, on September 1, 2011, these cases must be reported on the new form. If your court is unable to reclassify cases pending on or before August 31, 2011 into the new categories, the pending cases should be reported as pending or disposed on or after September 1, 2011 according to the chart to the right. If you do not reclassify cases pending on or before August 31, 2011 into the new categories, please remember that each case must be reported as disposed of in the **same category** under which it was reported filed so that the filings and dispositions will balance. (For instance, a pending non-parking traffic misdemeanor case must be counted as disposed under the non-parking traffic misdemeanor case category.)

### 2. What if a case is initially filed under one category but is later changed to another category?

As a general rule, count the case under the original case category. However, if the original case category was selected in error, or the change in case category is significant, you should file an amended report(s) making the correction(s) for each month affected by the change.

Another option, but the least desirable one, is entering a docket adjustment in one month's report to correct the number of cases pending in each case category.

### 3. I've heard that we are supposed to start using the new case categories as soon as possible, but OCA will not be able to accept the new report format until September 2011. How am I supposed to complete the current reports if I am using the new case categories?

It should be easy for your programmer to re-write your OCA reports so that they classify the new case categories into the current report format. If this is not possible, it should also be easy to manually add the information in the new categories together to get the figures for the current categories.

- For Non-Traffic Misdemeanors, simply add together the figures for Penal Code and Other State Law violations, then enter this in the State Law violation column.
- The Traffic Misdemeanors categories will be more

Old Category	New Category
<b>Traffic Misdemeanors</b>	
Non-Parking	Non-Parking <sup>1</sup>
Parking	Parking <sup>2</sup>
<b>Non-Traffic Misdemeanors</b>	
State Law	Other State Law

<sup>1</sup> Even though the case may be a city traffic ordinance violation.  
<sup>2</sup> Even though the case may be a city parking ordinance violation or a civil/administrative case.

problematic. The best thing to do is classify City or County Ordinance violations into Non-Parking and Parking subcategories. By doing this, the City/County non-parking traffic misdemeanors may be added to the Non-Parking Traffic Misdemeanors column on the current report, and the City/County parking traffic misdemeanor violations may be added to the Parking Traffic Misdemeanors column.

- Courts that handle parking violations administratively should count those cases in the Parking column of the current report.
- Enter the figures for New Cases only on the form, leaving out Cases Reactivated and All Other Cases Added.
- Add together the figures for Conviction—Guilty Plea or Nolo Contendere and Conviction—by the Court, then enter this in the Trial by Judge—Finding of Guilty line.

### 4. As a clerk, I do not know when hearings are held. These are handled by the judge, who does not keep track of these matters. How will I be able to report the information required about hearings?

Wherever possible, data elements were tied to a document that the clerk processes. However, some items were included on the new reports because they were considered critical to accurately reflect court workload.

Thus, a number of items on the new reports will require collaboration between clerks, judges, and case management vendors or information technology staff to determine the best methods to collect, compile, and report the required information. The arrangements or processes developed for obtaining the information from the courts

will likely be unique in each county or city.

**5. What date/event should be used to determine when a criminal or juvenile case becomes reactivated—the date of arrest or the date of the defendant’s first hearing?**

The date of the defendant's first hearing is our preference. If you do not have access to accurate

information about the date of the first hearing, use the date of arrest (date the warrant was executed).

**6. When should I report a case in which the fine and court costs have been satisfied by community service or jail credit?**

Report these cases when the fine and court costs have been satisfied in full and the case is closed.

**Technical Questions**

**1. How will the new reports be submitted to OCA?**

The methods of submission will not change. Clerks have three options:

- a) manually entering the reports into the Trial Court Data Management System,
- b) uploading an XML file into the system, or
- c) mailing, faxing, or emailing the report to OCA for data entry.

Approximately 70 percent of municipal courts are reporting electronically. Option c will only be available to courts who have obtained a waiver from electronic reporting from OCA.

**2. When will I be able to get my XML file tested by OCA? How do I get it tested?**

OCA plans to enable testing of XML files in the spring of 2011. Thomas Sullivan is the contact person for XML testing. He may be reached by email at [Thomas.Sullivan@courts.state.tx.us](mailto:Thomas.Sullivan@courts.state.tx.us) or 512.463.8109.

XML files must be tested and approved by OCA before a court may begin submitting their reports via XML on a regular basis.

**NEW TMCEC ON-LINE LEARNING CENTER (OLC)  
WEBINAR INSTRUCTIONS**

**To view a TMCEC webinar, you must first log into the OLC at <http://online.tmcec.com>:**

- 1. Type <http://online.tmcec.com> into your browser’s address bar or use the link provided on the TMCEC website.
- 2. On the OLC home page, find the login box in the upper left corner of the page.
- 3. Enter your username and password and click **Login**.

**To enroll in an upcoming webinar, please follow these instructions:**

- 1. Look for the list of **Course Categories** in the middle of the page just below the welcome message.
- 2. Click **Upcoming Webinars** to view a full schedule. The name of the presenter, the date, and the time will be provided to the right of the title.
- 3. Click the **title** of the webinar you would like to attend.
- 4. You will see a message that says “You are about to enroll yourself as a member of this course. Are you sure you wish to do this?” and two options: Yes and No. There is no preregistration for our upcoming webinars, but you must be enrolled to view the webinar link, course materials, and most importantly, to receive credit for the webinar. Click **Yes** to enroll.
- 5. You are now considered enrolled in the webinar. You will see the webinar title and below the title, links for Webinar, Course Materials (there may be more than one), Evaluation, CLE Credit (if available), and Certificate of Completion.

**To view the webinar, no more than 30 minutes prior to the scheduled start time, please follow these instructions:**

- 1. Click **Webinar**.
- 2. The link will open a new window in your web browser. You should see the title of the webinar and two options for logging in. Choose **Enter as a Guest** and type your first and last name - exactly as you want it to appear on your certificate - into the space provided. Click **Enter Room**.
- 3. You will experience a short delay as the software to display the webinar is automatically installed and configured on your system. You should not be asked to download or confirm anything. When the software is configured, you should be able to view the webinar.
- 4. Make sure you have the sound turned up on your computer speakers as you will not be calling in on the telephone.

Look in the Webinar FAQ book on the Upcoming Webinars page of the OLC for more instructions on webinars or contact TMCEC at 800.252.3718.

**OCA Reporting Webinar Series:**

- June 22nd at 10:00 a.m.
- July 26th at 10:00 a.m.
- August 24th at 10:00 a.m.

See page 25 for more info.

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# AMNESTY PROGRAMS, WARRANT ROUNDUPS, AND THE GREAT TEXAS WARRANT ROUNDUP

By Don McKinley  
Municipal Court Manager, City of Austin

One question occasionally asked is: what works? Amnesty programs or warrant roundups? The short answer is both, depending on what outcome you are looking for (short-or long-term). Both amnesty programs and warrant roundups have similar goals, which include the following:

- disposing of outstanding cases;
- clearing outstanding warrants;
- increasing court revenue; and
- most importantly, increasing compliance with orders of the court.

Amnesty is defined by Webster's Dictionary as the *act of an authority (as in a government) by which pardon is granted to a large group of individuals*. Amnesty programs generally offer two forms of incentives: freedom-based or financial-based.

If you are considering an amnesty program for your court, take a moment to think about the message that may be inadvertently sent to your customers/defendants in your community (we all know how powerful the "word" on the street can be). The message usually received by the customer/defendant by an amnesty program is, "We have a financial deal for you if you come in to court and handle your outstanding obligation." Does amnesty work? Yes, amnesty programs do a good job in meeting the goals listed above. However, a question can be raised as to why there should be any financial incentive offered. Most customers/defendants under an amnesty haven't followed through on their obligation, haven't complied with court orders, have failed to pay court costs, fees, or fines, or have ignored the court altogether; so why should they get a financial deal when other customers/defendants who have complied accordingly and timely do not? Actually, cutting a deal, could hamper future compliance and collection efforts, and customers/defendants may develop a mentality of waiting for the next amnesty program or deal to come around.

Is there a better way? A well-publicized warrant roundup campaign can be a better alternative. Experience has shown that a coordinated warrant roundup campaign will prove more successful. It meets the four goals listed above, and offers no financial incentive or giveaway. It maintains the effectiveness of the warrant as an

enforcement tool for your court against those who have failed to appear, and of the *capias pro fine* as an enforcement tool for your court against those who have failed to pay and satisfy a court judgment.

Using local media is crucial to helping get the word out for a successful campaign. Local radio stations, newspapers (especially the "free" area papers), and television are all helpful. You may also be able to use your local cable bulletin board, local utility bills, or water bills to help relay the message. Many cities have also used billboard signs as a way to get the word out to their community.

When planning a successful warrant roundup, it is important to get all parties involved and participating. Include local law enforcement—police department, sheriff's office, city marshals, county constables, and warrant officers. Input and support from your judge(s) and prosecutor(s) is extremely important. Be careful in selecting a date to kick off the roundup campaign. Based upon experience, many cities or courts use the first Saturday in March to conduct the warrant roundup. This coincides during the time when individuals are receiving tax refunds, and before students head off to spring break. Also, it is a good idea to release your warrant roundup date (when arrests will begin) to the public two or three weeks in advance. This will establish a deadline, generate interest, and serve as advance notice of the event to the community.

If you have an outside collections vendor, they will most likely want to be included and can send out letters on the event along with the court. Using media will assist in getting the word out to the community; however, the roundup campaign is "personalized" by the court and/or collections vendor sending out notices, letters, or postcards to the customer/defendant. A separate specialized warrant roundup notice to the customer/defendant immediately sends the message that the warrant roundup is specifically looking for them. The notice, letter, or postcard should be different from other correspondence used by the court in design, color, wording, or tone to garner attention from the customer/defendant with outstanding warrants. Along with the impact of your warrant roundup notice and media attention, you may also want to include a telephone

campaign to customers/defendants with outstanding warrants in the weeks leading up to your warrant roundup campaign.

A few other additional items you may need to consider for a warrant roundup: extra or “special” hours of operation for the court (staff and judges), staff compensation for additional hours worked (this could be earned compensatory time or paid overtime depending on budget), press and media control, and higher customer activity will be seen by your court. Be prepared for press questions about the number of cases you expect to close, the number of warrants outstanding, revenue or additional revenue received, the number of arrests made by law enforcement, and the age of cases closed. Also, be prepared to have some fun! An effective, well-coordinated warrant roundup will generate additional activity, telephone calls, customer traffic, and increased workload, especially in the final days leading up to the warrant roundup date. You should also see increases in cases closed, number of warrants cancelled, revenue, and increased compliance with orders of the court. You

may even experience increased team-building as staff work close together to get the job done. Don’t forget to reward everyone and yourself after the campaign for their hard work with a pizza party, lunch, or some other surprise for a job well done.

During the past five years, courts and law enforcement from all over the State of Texas have joined together to form what is known as the Great Texas Warrant Roundup. Each area of the state is represented and the number of participating agencies/cities has grown each year.

The 2011 Great Texas Warrant Roundup just concluded in March. Over 250 entities participated. Thanks to everyone who participated and reported making this year’s Great Texas Warrant Roundup a great success.

Start preparing now for the 2012 Great Texas Warrant Roundup. For questions or for more information, contact Rebecca Stark at [rebecca.stark@ci.austin.tx.us](mailto:rebecca.stark@ci.austin.tx.us) or Don McKinley at [don.mckinley@ci.austin.tx.us](mailto:don.mckinley@ci.austin.tx.us).



The 2011 Great Texas Warrant Roundup  
By the Numbers

Dates: March 5 – March 31, 2011

Number of Warrants Cleared: 136,091

Face Value of Warrants Cleared: \$42,071,352.15

\*figures as of April 1, 2011 with 164 of 250 agencies having reported



## FROM THE CENTER

### CHANGES TO THE CLERKS CERTIFICATION PROGRAM

At the last meeting of the TCCA Education Committee, the following changes to the clerks certification program were adopted.

- **Level III Reading List:** Starting April 1, 2011, a new book will be added to the Level III Reading List. *Protecting Court: A Practitioner's Guide to Court Security* by Jimmie H. Barrett. It will replace *Court Security: A Guide for Post 9-11 Environments*. Participants will have until December 31, 2011 to choose which book they would like to test under. Starting January 1, 2012 testing will only cover *Protecting Court: A Practitioner's Guide to Court Security*.
- **Webinars:** TMCEC Archived Webinars (a/k/a Webinars on Demand) can now be used for Clerk Certification Credit (up to seven hours per year). NCSC webinars, live or archived, can also be used for Clerk Certification Credit (up to seven hours).
- **TMCEC Pre-Conference Preparation Courses:** Beginning September 1, 2011, certification study guides will no longer be provided at Preparation Courses. Study guides can be downloaded and printed free of charge from [www.tmcec.com](http://www.tmcec.com).

### COMPLAINT BANK

With limited exception, it is the “complaint” that vests jurisdiction over a criminal case in municipal courts. Article 45.018(a) of the Code of Criminal Procedure defines a complaint, for municipal court purposes, as a sworn allegation charging the accused with the commission of an offense. While Article 45.019 of the Code of Criminal Procedure lays out the statutory requirements for a complaint, there is no magic form or substance required. Drafting a complaint is a fine art and a sometimes daunting task. As a resource, TMCEC has drafted sample complaints for a variety of state law offenses for use by Texas municipal courts; however, every day courts need complaints for the over 1,000 fine-only misdemeanors under state law and limitless city ordinance violations. The Complaint Bank is a portal for prosecutors and clerks to submit complaints for use by those cities in need. Today there are 41 complaints available on the complaint bank, but TMCEC wants your contributions.

To access the Complaint Bank, go to the TMCEC website at: [www.tmcec.com/Resources/Complaints](http://www.tmcec.com/Resources/Complaints).

### JURY CHARGE BANK

Once jurisdiction is vested and criminal charges are filed, defendants have a constitutional and statutory right to trial by jury. In FY 2010, Texas municipal courts held over 5,100 jury trials (out of a 99.9% reporting rate). Article 36.14 of the Code of Criminal Procedure provides that “in each misdemeanor case tried in a court of record, the judge shall, before the argument begins, deliver to the jury . . . a written charge distinctly setting forth the law applicable to the case; not expressing any opinion as to the weight of the evidence, not summing up the testimony, discussing the facts or using any argument . . . calculated to arouse the sympathy or excite the passions of the jury.” To assist courts in meeting this requirement, TMCEC’s Jury Charge Bank was established in 2007 with contributions by Sara Hartin, Presiding Judge of the New Braunfels Municipal Court. There are currently 55 jury charges available.

To access the Jury Charge Bank, go to: [www.tmcec.com/Resources/Jury\\_Charges](http://www.tmcec.com/Resources/Jury_Charges).

The Jury Charge Bank and Complaint Bank both consist of a series of Microsoft Word documents with suggested language for fine-only state law violations and selected city ordinance violations. Download the documents to your own computer, and then edit the language carefully so that it includes the information required for your specific case(s).

We invite prosecutors, clerks, and judges to submit both model complaints and jury charges as resources for other prosecutors and courts in need. Submissions to the Complaint and Jury Charge Banks are welcome, and should be directed to [tmcec@tmcec.com](mailto:tmcec@tmcec.com).

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## TMCEC LISTSERV FOR MUNICIPAL BAILIFFS, WARRANT OFFICERS, AND MARSHALS

The Texas Municipal Courts Education Center sponsors a listserv for municipal court bailiffs and those warrant officers who serve process for the municipal court. Bailiffs or warrant officers who participate must agree to the Terms of Use (see below). There is no charge to subscribe, as the listserv is sponsored by Yahoo! and contains a small amount of commercial advertising.

Address for TMCEC Bailiffs/Warrant Officers Listserv: ***TxBWOM@yahoogroups.com***.

The purposes of this listserv are to (1) provide participants with up-to-date information on laws and procedures that affect the operations of Texas municipal courts; (2) allow participants to network, problem-solve, and share with others what problems arise in your court; and (3) distribute information relevant to municipal courts, such as information on publications and seminars. We ask that messages sent over the TMCEC Bailiffs/Warrant Officers listserv be limited to matters related to municipal court operations or process, and not to general law enforcement issues. Please note that this listserv is not to be used as a forum for advertising. Users must be careful to not send irrelevant messages as they will be blocked from participation.

To join the listserv, send your name, title, court name, telephone number, and email address to Hope Lochridge at [hope@tmcec.com](mailto:hope@tmcec.com). To remove your name from the listserv, just send a message to unsubscribe.

### TMCEC BAILIFFS/WARRANT OFFICERS LISTSERV: TERMS OF USE

The following terms are acknowledged and binding upon all participants using the TMCEC Listserv:

1. By participating, users claim that they are currently employed as a bailiff (providing security) or warrant officer (serving process) for a Texas municipal court.
2. Users agree that the primary purpose of the listserv is to provide a collegial forum for municipal court bailiffs and warrant officers to share general legal information and thoughts pertaining to municipal court matters.
3. Users agree that they will not disclose specific information about pending cases, reveal confidential information, or make inappropriate comments in violation of the Canons of Judicial Conduct or Law Enforcement Code of Ethics.
4. Users acknowledge that all electronic transmissions are neither confidential nor protected from public disclosure.
5. Users assume individual responsibility for their comments and agree that violation of the stated terms of use can result in their removal from the listserv and potential disciplinary action.
6. While the listserv is sponsored by the Texas Municipal Courts Education Center, the comments expressed by users are solely those of the author and are not those of the Texas Municipal Courts Association Board of Directors or the staff of TMCEC.

Note: There are also TMCEC listservs for three other municipal constituent groups served by TMCEC: judges, court administrators, and prosecutors. Only members of the constituent group and TMCEC staff members are eligible for inclusion. If you are interested in joining, send your name, title, city, and email address to Hope Lochridge ([hope@tmcec.com](mailto:hope@tmcec.com)). You will then receive an invitation by email to participate. You then must accept the invitation by clicking on a link or icon. If you do not get this email response, please check your junk mail or spam folder as the email comes from [yahoogroups.com](http://yahoogroups.com) and computer filters often recognize it as an unsolicited email. There is also a listserv with information of interest in promoting traffic safety in local communities—it is open to all constituent groups.

CERTIFICATES	
Did you know that you can print your own certificate from a TMCEC program via the TMCEC online registration system?	5. Find desired event and select Print <i>Certificate</i> .
1. Go to <a href="http://register.tmcec.com">http://register.tmcec.com</a> ;	In FY 12, participants will be responsible for printing their own certificates rather than receiving them from TMCEC via U.S. mail. This is a cost saving measure. If you would like TMCEC to print a certificate for you, the fee for the certificate, postage, and handling will be \$5. Watch for the order form on the TMCEC website ( <a href="http://www.tmcec.com">www.tmcec.com</a> ) in September.
2. Enter your login and password;	
3. Once logged in, select <i>view my profile</i> (right hand side under membercenter);	
4. Scroll down to <i>Your Events</i> ;	



# MUNICIPAL TRAFFIC SAFETY INITIATIVES

-NEWS YOU CAN USE-

## MTSI Award Winners Announced

The Texas Municipal Courts Education Center’s (TMCEC) Municipal Traffic Safety Initiatives (MTSI) Program, funded by a grant from the Texas Department of Transportation, recently sponsored a Traffic Safety Award to recognize those courts that have made outstanding contributions to their community in an effort to increase traffic safety. This competition was a friendly way for municipalities to increase their attention to quality of life through traffic safety activities. All municipal courts in Texas were eligible and encouraged to apply. Applicants were judged on the basis of what their court is doing in terms of public outreach in their community to increase traffic safety while decreasing traffic crashes, traffic fatalities, juvenile DUI, child safety seat offenses, red light running, and other traffic-related offenses. Numerous award applications were received, and the following courts were selected by a panel of judges to receive recognition for their initiatives and hard work:

- Low Volume: Bastrop, Corinth, Harker Heights, McGregor, and Westworth Village
- Medium Volume: College Station, Conroe, Frisco, La Porte, and San Marcos
- High Volume: Irving

The awards presentation occurred on Monday, May 23, 2011 in San Antonio at the 2011 Municipal Traffic Safety Initiatives Conference. Texas Municipal Courts Association (TMCA) Board President, Judge Stewart Milner of the Arlington Municipal Court, presented the awards to the recipients.

The award recipients then hosted a breakout session at the Traffic Safety Conference so other courts could learn about the award recipient’s traffic safety initiatives and ways they incorporate traffic safety outreach in their courts. In the past years, these breakout sessions were extremely successful in encouraging other courts to follow suit and work more diligently in the area of traffic safety education.

To learn more about the Texas Municipal Courts Education Center or the Municipal Traffic Safety Award, contact Lisa Robinson, TMCEC Grant Administrator (robinson@tmcec.com or 512.320.8274) or visit [www.tmcec.com](http://www.tmcec.com).



## Making A Difference: Judge Kevin R. Madison

By Hong Escobar  
TxDOT Grant Administrator, TMCEC

Judge Kevin Madison’s interest in promoting traffic safety and safe driving habits among young drivers stems from his background in civil service and public safety. Judge Madison, who currently serves as Presiding Judge of the Lakeway Municipal Court, is a former police officer who still serves as a volunteer firefighter and EMT First Responder. “When you respond to a rollover fatality with a 16 year old driver who was ejected and wasn’t wearing a seat belt, it is painful,” said Judge Madison.

According to the National Highway Traffic Safety Administration, 33% of young drivers (age 15-20) killed in crashes had a blood-alcohol content of .01 g/dL or higher. Texas has a zero tolerance policy with regard to underage drinking and driving—it is illegal for a person under 21 to operate a motor vehicle in a public place while having **any** detectable amount of alcohol in their system. In Texas alone, nearly 2,600 citations were issued to minors for driving under the

influence of alcohol last year.

Judge Madison sees many young drivers in his courtroom facing charges related to traffic violations. "After serving as a judge for years, I realized that I might be able to impact young drivers who were in my court and try to educate them about the dangers of impaired driving, speeding, and distracted driving." He notes that "[y]oung, inexperienced drivers — especially single young male drivers — cause the most collisions and fatalities." When appearing in the Lakeway Municipal Court, teen traffic violators are offered deferred disposition, a specific type of probation available in municipal and justice courts. If the teen offenders complete a series of conditions set by the court, the charges are subsequently dismissed without conviction.

Judge Madison has implemented a number of creative probation conditions, ranging from requiring teens and parents to sign a "Safe Driving Contract" to making teen defendants place "Report My Unsafe Driving" bumper stickers on their cars for the duration of their deferred term. Both conditions are designed to hold teens accountable for their actions. He uses unique strategies to drive home the importance of safe driving habits with teens who have committed a traffic offense.

For example, in cases involving defendants who speed in a school zone and pass a loading/unloading school bus, Judge Madison orders defendants to stand with the school crossing guard for one hour so that they, as a condition of deferred disposition, witness firsthand the dangers reckless drivers pose to young school children.

In another case, Judge Madison ordered a teen charged with minor driving under the influence, to attend a local alcohol counseling class and

a MADD Victim Impact Panel with DWI victims. The defendant also had to write an essay after watching a DVD about Jacqui Saburido. Saburido was horribly burned in a fire that started after the car she was riding in was hit by an underage teen drunk driver from Lake Travis High School. The defendant noted that fulfilling these probation conditions— instead of simply paying a fine— actually made him think about his behavior and change it. He said, "[i]f they just made me pay money and I didn't actually have to go to a class where there were real life victims and real life stories and close connections like this guy from Lake Travis ... I would have just shaken it off probably." By including conditions that bring teen offenders into contact with victims of underage impaired drivers, Judge Madison reminds teens that there are real consequences attached to underage alcohol consumption, often to innocent bystanders like Jacqui Saburido. Judge Madison noted, "[e]ven if a teen driver survives a collision, many suffer catastrophic injuries, like paralysis or head injuries. This affects not only the child, but their parents, their friends, and society." Ultimately, these examples serve to remind drivers of how precious life can be and how it can be changed in an instant by a regrettable decision.

In 2008 and 2009, Judge Madison was recognized by the Texas Municipal Courts Association for his efforts to educate young drivers about safe driving. Not only does Judge Madison encourage safe driving habits in his courtroom, he believes judges play an integral part in promoting traffic safety education within their community. Judges can actively engage youth by speaking about traffic safety at schools or to community groups, such as Rotary clubs. Judges can also help start a traffic safety section in the community's library to ensure free resources are available to everyone.

The Texas Municipal Courts Education Center is a great place for municipal judges to find materials regarding traffic safety education efforts. TMCEC's website ([www.tmcec.com](http://www.tmcec.com)) contains information sheets, quick reference charts, and other support materials that judges can use during presentations to schools, clubs, or community civic groups. Simply click on the Driving on the Right Side of the Road (DRSR) image on the website. TMCEC also offers numerous regional conferences throughout the year to provide judges and court personnel with the tools necessary to educate the public, particularly children and new drivers, about the rules of the road.

#### DID YOU KNOW?

The TMCEC website contains a wealth of information, including access to course materials from regional judge, clerk, prosecutor, and bailiff/warrant officer programs for the past five years. Go to [www.tmcec.com/Resources/Course\\_Materials/](http://www.tmcec.com/Resources/Course_Materials/). They are organized by constituent type. Written materials, as well as PowerPoint presentations, are often included. For the regional judges and clerks programs, there are audio files of the actual presentations from the final regional program.

The FY 11 course materials, PowerPoint presentations, and audio files will be on the website in mid-July. This is a great way to listen to breakout sessions that you were unable to attend.

Bailiffs and warrant officers will access their course materials on the Online Learning Center, as some of the course materials are not for public release. Go to: <http://online.tmcec.com> or click on the OLC graphic on the TMCEC website at [www.tmcec.com](http://www.tmcec.com). If you do not know your login, contact TMCEC – 800.252.3718 or [tmcec@tmcec.com](mailto:tmcec@tmcec.com).

At a recent planning session, TMCEC constituents suggested that the course materials be available earlier in the year. Great idea! We will make every effort to do so next year!

## Traffic Safety Specialists - District Contact List

TxDOT Traffic Safety Specialists facilitate traffic safety aspects on a district level. They manage local projects and assist organizations with traffic safety outreach. Shown below are names, region, and contact information. These individuals can be supportive of local municipal traffic safety initiatives by providing public information materials and services.

District	Name	Telephone	Email
Abilene & Lubbock	Karen Peoples	806.748.4478	karen.peoples@txdot.gov
Amarillo & Childress	Tracy Tellman	806.356.3295	tracy.tellman@txdot.gov
Atlanta	Irene Webster	903.799.1221	irene.webster@txdot.gov
Austin	(Interim) Michael Weaver	512.416.3209	michael.weaver@txdot.gov
Beaumont	Georgette Pillitere	409.898.5719	georgette.pillitere@txdot.gov
Brownwood & Waco	Cindy Parks	254.867.2725	cindy.parks@txdot.gov
Bryan	Terri Miller	979.778.9777	terri.miller@txdot.gov
Corpus Christi & Yoakum	Hazel Zepeda	361.808.2381	hazel.zepeda@txdot.gov
Dallas	Susan Clark	214.320.6220	susan.clark@txdot.gov
El Paso	Monica O’Kane	915.790.4384	monica.okane@txdot.gov
Fort Worth	Kathy Neely	817.370.6626	kathy.neely@txdot.gov
Houston	Garry Rand Olga Navarro	713.802.5187 713.802.5177	garry.rand@txdot.gov olga.navarro@txdot.gov
Laredo and Pharr	Ruby Martinez	956.782.2508	ruby.martinez@txdot.gov
Lufkin	Robyn Herring	936.633.4315	robyn.herring@txdot.gov
Odessa & San Angelo	Robert Martinez	432.498.4748	robert.martinez@txdot.gov
Paris & Wichita Falls	Patsy Walls	940.720.7708	patsy.walls@txdot.gov
San Antonio	Samuel Aguirre	210.731.5220	samuel.aguirre@txdot.gov
Tyler	Wanda Ealey	930.510.9225	wanda.ealey@txdot.gov
Waco & Brownwood	Cindy Parks	254.867.2725	cindy.parks@txdot.gov

## Stop and Take Notice



The Texas Municipal Courts Association Public Outreach Committee along with the Texas Municipal Courts Education Center would like to encourage you to go out in your community and address the need for traffic safety education and awareness.

Please take the time to look at the TMCEC website ([www.tmcec.com](http://www.tmcec.com)) and use the materials provided on the Municipal Traffic Safety Initiatives and Driving on the Right Side of the Road web pages to help your community understand the importance of safe driving. The TMCA Public Outreach Committee CHALLENGES all municipal judges and court personnel to speak at schools, senior centers, and civic groups to help promote the court and importance of traffic safety.

We also encourage you to sign up for the speakers’ bureau, which will help locate speakers for schools and civic groups requesting this type of outreach. Please fax your information to TMCEC at 512.435.6118 or email [robinson@tmcec.com](mailto:robinson@tmcec.com).

### Add Me to the Speakers’ Bureau

Name: \_\_\_\_\_  
 Court: \_\_\_\_\_  
 Tel.# : \_\_\_\_\_  
 Email: \_\_\_\_\_

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## UPCOMING TMCEC PROGRAMS

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**OCA Reporting Webinar Series:** Due to high demand, TMCEC has added more opportunities to learn about the upcoming changes to the OCA Municipal Court Monthly Report that will take effect September 1st of this year! The webinar will address the changes and some of the frequently asked questions related to the monthly report in general. Remaining live webinar dates and times are: June 22nd (Wednesday) @ 10:00 a.m., July 26th (Tuesday) @ 10:00 a.m., and August 24th (Wednesday) at 10:00 a.m. Logon to the TMCEC Online Learning Center at <http://online.tmcec.com/>. If you do not have access to your login name and password, contact [tmcec@tmcec.com](mailto:tmcec@tmcec.com). The previous four recorded webinars on this topic can be viewed under the Webinars on Demand page.

**Other Webinars Scheduled:**

Juvenile Law Update, June 2nd (Thursday) @ 10 a.m.

Recent Changes to the Driver Responsibility Program, July 6th (Wednesday) @ 10 a.m.

**San Antonio 18th Annual Prosecutors' Conference:** TMCEC will host a specially designed CLE program for municipal prosecutors on June 6-8, 2011 at the St. Anthony Hotel in San Antonio. Offering up to 15 hours of CLE, courses include Legislative Update, Persuasion: Confronting Adverse Materials in Legal Advocacy, Conflicts of Interests, Effective Use of Visual Aids in Trial Presentation, Case Law and Attorney General Update, Nuisance Abatement, Citation Abuse: The Classroom to Prison Pipeline, Transfer of Juvenile Cases, Recusal and Disqualification of Municipal Judges, Speed Measurement Objections, and Bicycle Laws. Go to <http://www.tmcec.com/Programs/Registration/Brochures> for an information brochure that includes registration and housing costs.

**San Antonio Court Administrators' Conference:** TMCEC will host a program for court administrators on June 6-8, 2011 at the St. Anthony Hotel in San Antonio. Planned courses include Juveniles: After the Judgment, Where Does the Money Go?, Little Black Book: Policy Manuals, Internal Controls, Employee Recognition, and Trends in Regulation of Mobile Devices. To register, please use the registration form on page 28 of this issue of *The Recorder*.

**DFW Area Local Clerks Program:** TMCEC is coming to Fort Worth/Arlington (Radisson Fort at Worth Fossil Creek) on Monday, June 27th for the newly-designed Local Clerks program! This program promises to provide an interactive training and give you the opportunity to network and meet other clerks from the area. Designed to meet the needs of those clerks who cannot get away from the court for more than one day, this 8:00-5:00 program will offer eight hours of certification credit and courses in: DSC & Deferred, Alcohol Offenses in Municipal Court, Cell Phone Use While Driving, Juveniles in Municipal Court, Social Media and the Courts, and Warrants. Registration is \$50. Download the brochure for more information and a registration form: <http://www.tmcec.com/Programs/Registration/Brochures>. We hope to see you there!

**One Day Clinic – Juvenile Issues: Laws Related to Children in Municipal Court:** TMCEC will be holding the last one-day clinic of this academic year on Wednesday, June 29th in Austin. This intensive clinic will focus on the laws relating specifically to the nearly 300,000 juvenile cases municipal courts see annually. During the clinic, we will explore and examine the transfer of juvenile cases, juvenile noncompliance, as well as recent and upcoming legislative changes pertaining to juveniles and minors. Registration is \$20. Download the brochure for more information and a registration form: <http://www.tmcec.com/Programs/Registration/Brochures>.

**Legislative Updates:** Don't miss the TMCEC Legislative Updates. Programs in three different sites will be offered – Lubbock, Houston, and Austin. See page 26 of this issue of *The Recorder* for more information.

**LUBBOCK**

August 10, 2011  
Overton Hotel  
806.776.7000

**HOUSTON**

August 16, 2011  
Omni Houston  
Riverway  
713.871.8181

**AUSTIN**

August 19, 2011  
Omni Southpark  
512.448.2222



## Legislative Update '11 Registration Form

TMCEC is offering three legislative updates. See below for dates and sites. The program lasts from 9:00 a.m. to 4:00 p.m. with an optional Q & A from 4:00 to 5:00 p.m. Participants are responsible for making and paying for their own hotel reservations. TMCEC will send hotel information upon receipt of your registration form and the \$100 fee (\$150 for defense lawyers and council members). Up to six hours of CLE can be received for an additional payment of \$50.

**Location:**

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> <b>LUBBOCK</b>          | <input type="checkbox"/> <b>HOUSTON</b>                     | <input type="checkbox"/> <b>AUSTIN</b>            |
| August 10, 2011<br>Overton Hotel<br>806.776.7000 | August 16, 2011<br>Omni Houston<br>Riverway<br>713.871.8181 | August 19, 2011<br>Omni Southpark<br>512.448.2222 |

Name (please print legibly): \_\_\_\_\_  
 Street: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Office Telephone #: \_\_\_\_\_ Court #: \_\_\_\_\_ Fax: \_\_\_\_\_  
 Primary City Served: \_\_\_\_\_ Other Cities Served: \_\_\_\_\_  
 Email Address: \_\_\_\_\_

**Check all that apply:**

- |  |  |   |  |                                       |   |
|--|--|---|--|---------------------------------------|---|
| <input type="checkbox"/> Full Time               | <input type="checkbox"/> Part Time                 | <input type="checkbox"/> Attorney**           | <input type="checkbox"/> Non-Attorney            | <input type="checkbox"/> Prosecutor** | <input type="checkbox"/> Defense Lawyer (\$150)** |
| <input type="checkbox"/> Presiding Judge         | <input type="checkbox"/> Associate/Alternate Judge | <input type="checkbox"/> Justice of the Peace | <input type="checkbox"/> Mayor & Council (\$150) |                                       |   |
| <input type="checkbox"/> Court Administrator     | <input type="checkbox"/> Court Clerk               | <input type="checkbox"/> Deputy Court Clerk   | <input type="checkbox"/> Other (\$150):          |                                       | _____   |
| <input type="checkbox"/> Bailiff/Warrant Officer |  |   |  |                                       |   |

\*\* Please add \$50 if requesting CLE credit.

*I understand that I will be responsible for making and paying for my own hotel reservation. Payment is required for this program; payment is due with this form. The registration fee is refundable if the Center is notified of cancellation in writing 10 days prior to the seminar.*

Participant Signature \_\_\_\_\_ Date \_\_\_\_\_

**PAYMENT INFORMATION:**

- \$100** Check for Registration Fee Enclosed

For participants who do not work in a municipal court:

- \$150** Check for Registration Fee Enclosed

- \*\*  **\$50** Check for CLE Fee Enclosed

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

Credit Card type:

<input type="checkbox"/> <b>MasterCard</b>	Credit Card Number _____	Expiration Date _____	Verification Number (found on back of card) _____
<input type="checkbox"/> <b>Visa</b>	Name as it appears on card (print clearly): _____		
Total Amount:	\$ _____		
	Authorized Signature _____		

## 2010 - 2011 TMCEC Academic Schedule At-A-Glance

Seminar	Date(s)	City	Hotel Information
Prosecutors & Court Administrators Seminar	June 6-8, 2011	San Antonio	St. Anthony Hotel 300 E. Travis, San Antonio, TX
Regional Judges and Clerks Seminar	June 13-15, 2011	Odessa	MCM Elegante 5200 East University, Odessa, TX
8-hr Local Clerks Program	June 27, 2011	Fort Worth / Arlington	Radisson Fort Worth Fossil Creek 2540 Meacham Boulevard, Fort Worth, TX
One Day Clinic: Juveniles	June 29, 2011	Austin	TMCEC 1609 Shoal Creek Blvd. Ste. 302, Austin, TX
New Judges Seminar	July 18-22, 2011	Austin	Omni Southpark 4140 Governor's Row, Austin, TX
New Clerks Seminar	July 18-21, 2011	Austin	Omni Southpark 4140 Governor's Row, Austin, TX
Legislative Update - Lubbock	August 10, 2011	Lubbock	Overton Hotel 2322 Mac Davis Ln, Lubbock, TX
Legislative Update - Houston	August 16, 2011	Houston	Omni Hotel Houston 4 Riverway, Houston, TX
Legislative Update - Austin	August 19, 2011	Austin	Omni Southpark 4140 Governor's Row, Austin, TX

## TMCEC IS ON TWITTER AND FACEBOOK!

We hope that you will follow TMCEC on this new form of communication. Both can be accessed on the bottom of the TMCEC home page at [www.tmcec.com](http://www.tmcec.com). Special appreciation to Ryan Turner, TMCEC General Counsel, for setting this up and keeping us all up-to-date on legal happenings.



**TEXAS MUNICIPAL COURTS EDUCATION CENTER  
FY11 REGISTRATION FORM**

Conference Date: \_\_\_\_\_  
Conference Site: \_\_\_\_\_

Check one:

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> New, Non-Attorney Judge (\$200)                     | <input type="checkbox"/> Traffic Safety Conference - Judges & Clerks (\$50) | <input type="checkbox"/> Prosecutor <b>not seeking CLE/no room</b> (\$200) |
| <input type="checkbox"/> New Clerk program (\$200)                           | <input type="checkbox"/> Clerk/Court Administrator (\$50)                   | <input type="checkbox"/> Prosecutor <b>seeking CLE/no room</b> (\$300)     |
| <input type="checkbox"/> Non-Attorney Judge (\$50)                           | <input type="checkbox"/> Bailiff/Warrant Officer* (\$150)                   | <input type="checkbox"/> Prosecutor <b>not seeking CLE credit</b> (\$350)  |
| <input type="checkbox"/> Attorney Judge <b>not seeking CLE credit</b> (\$50) | <input type="checkbox"/> Court Administrator Seminar - June (\$100)         | <input type="checkbox"/> Prosecutor <b>seeking CLE credit</b> (\$450)      |
| <input type="checkbox"/> Attorney Judge <b>seeking CLE credit</b> (\$150)    | <input type="checkbox"/> Legislative Update (\$100)                         | <input type="checkbox"/> CoLoGo (\$150/\$175)                              |

By choosing TMCEC as your MCLE provider, attorney-judges and prosecutors help TMCA pay for expenses not covered by the Court of Criminal Appeals grant. Your voluntary support is appreciated. (For more information, see the TMCEC Academic Schedule)

Name (please print legibly): Last Name: \_\_\_\_\_ First Name : \_\_\_\_\_ MI: \_\_\_\_\_  
Names you prefer to be called (if different): \_\_\_\_\_ Female/Male: \_\_\_\_\_  
Position held: \_\_\_\_\_  
Date appointed/Hired/Elected: \_\_\_\_\_ Years experience: \_\_\_\_\_  
Emergency contact: \_\_\_\_\_

**HOUSING INFORMATION**

TMCEC will make all hotel reservations from the information you provide on this form. TMCEC will pay for a single occupancy room at all seminars: four nights at the new judges/clerks seminars, three nights at the assessment clinics, and two nights at the regional seminars. To share with another 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

Arrival date: \_\_\_\_\_  Smoker  Non-Smoker

I do not need a room at the seminar.

Municipal Court of: \_\_\_\_\_ Email Address: \_\_\_\_\_  
Court Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_  
Office Telephone #: \_\_\_\_\_ Court #: \_\_\_\_\_ Fax: \_\_\_\_\_  
Primary City Served: \_\_\_\_\_ Other Cities Served: \_\_\_\_\_

**STATUS** (Check all that apply):

- |  |  |   |                                       |   |
|--|--|---|---------------------------------------|---|
| <input type="checkbox"/> Full Time           | <input type="checkbox"/> Part Time                 | <input type="checkbox"/> Bailiff/Warrant Officer/Marshal* | <input type="checkbox"/> Court Clerk  | <input type="checkbox"/> Deputy Court Clerk       |
| <input type="checkbox"/> Presiding Judge     | <input type="checkbox"/> Attorney                  | <input type="checkbox"/> Non-Attorney                     | <input type="checkbox"/> Prosecutor   | <input type="checkbox"/> Mayor (ex officio Judge) |
| <input type="checkbox"/> Court Administrator | <input type="checkbox"/> Associate/Alternate Judge | <input type="checkbox"/> Justice of the Peace             | <input type="checkbox"/> Other: _____ |   |

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

Judge's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Municipal Court of: \_\_\_\_\_ TCLEOSE PID # : \_\_\_\_\_

I certify that I am currently serving as a municipal judge, 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 10 business days prior to the conference. I agree that if I do not cancel 10 business days prior to the event that I am not eligible for a refund of the registration fee. I will first try to cancel by calling the TMCEC office in Austin. If I must cancel on the day before or day of the seminar due to an emergency, I will call the TMCEC registration desk at the conference site. If I have been unable to reach a staff member at the TMCEC office in Austin. If I do not attend the program, TMCEC reserves the right to invoice me or my city for meal expenses, course materials, and, if applicable, housing (\$85 or more plus tax per night). I understand that I will be responsible for the housing expense if I do not cancel or use my room. If I have requested a room, I certify that I work at least 30 miles from the conference site. **Payment is due with the registration form. Registration shall be confirmed only upon receipt of registration form and payment.**

\_\_\_\_\_  
Participant Signature (May only be signed by participant)

\_\_\_\_\_  
Date

**PAYMENT INFORMATION**

- Check Enclosed (Make checks payable to TMCEC.)  
 Credit Card

Credit Card Payment: Amount to Charge: \_\_\_\_\_ Credit Card Number \_\_\_\_\_ Expiration Date \_\_\_\_\_

Credit card type: \$ \_\_\_\_\_ Name as it appears on card (print clearly): \_\_\_\_\_

MasterCard  Visa

Authorized Signature: \_\_\_\_\_

Please return completed form with payment to TMCEC at 1609 Shoal Creek Boulevard #302, Austin, TX 78701, or fax to 512.435.6118.

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# THOUGHTS ON LEARNING AND CONTINUOUS IMPROVEMENT...

By Tracie Glaeser  
Court Manager, City of Lewisville

Recent events related to budget tightening have caused me to reflect on some history of my experience as a Municipal Court Clerk. In the early years, the court in local government was considered a department that “had to be created,” but the importance was the lowest on the proverbial totem pole. Even lower than the Animal Control Division. Even Animal Control had “urgency” associated with their role. Dog bites, wild animals, cows roaming on the roadway causing a major accident...

The only urgency city leaders could drum up for court was the collection of a “few” bucks a month in fines and warrants for citizens for expired vehicle inspection citations. One supervisor in my past compared the job qualifications to cashier at our local grocery store. It begged the question, just how important is the municipal court clerk’s role in the overall scheme of city business? Much to my delight, this notion has substantially changed through the years, thanks in part to municipal judges across Texas who realize what “access to the judiciary” really means. Additionally, thanks to the Texas Municipal Courts Education Center (TMCEC), who as an organization, has been dedicated to communicating and reinforcing the importance of municipal courts. Compared to other educational programs, TMCEC continues to bring municipal clerks the finest learning opportunities.

If we had continued on the path of least importance, just imagine how different today would be. I remember the first time I truly felt the importance in my choice of professional aspirations. I was visiting the wife of the Assistant

Chief of Police who was a very close friend. Many years ago, we were sitting together and talking about a career change she was contemplating. She said to me, “I want to do something really important. Something like you are doing.” That resonated. Someone else thought that all of those unpaid hours of handwriting tickets in big red docket books was important besides me. Let it be noted, she had never witnessed the work I did, she only heard me talk about its importance and my passion for it. I made it my personal goal to learn every day about this profession. I found ways to learn on my own time. In the early days there was no budget for sending court employees to school. With one exception, the training opportunities were entirely too expensive. My saving grace for education was TMCEC.

In the early years, had it not been for the grant that funded TMCEC, I would have had no outside education about the business of municipal court. Recalling those days is a comfort when I am faced with the revenue shortfalls we experience today. It reminds me of how the more difficult times can be transformed into a time of innovation and creativity; a time to make the most of what little you have.

What we do is important and continuous learning is an important part of making the court an honorable place to be employed, even if it is reading publications on our own time. The materials and other publications made available to us are numerous, thanks to our partners in continuous improvement: Texas Municipal Courts Association, TMCEC, and Texas State University. The study guides can be a great

resource even if you never have any intention of taking a certification test. I encourage everyone to take the time to appreciate the fruits of labor evidenced in the publications and resource materials made available to us on the TMCEC website: [www.tmcec.com](http://www.tmcec.com). On behalf of the Texas Court Clerk’s Association, thank you partners!

*Tracie Glaeser serves as the chair of the TCCA Education Committee, as well as on the TMCEC faculty. She can be reached at [tglaeser@cityoflewisville.com](mailto:tglaeser@cityoflewisville.com).*

## Funds Available for Court Training

Seemingly, no municipal court in the state is immune from the current “budget-crunch.” If your court is looking for ways to fund continuing education for court personnel, be sure not to overlook three specific court costs that can help.

Cities are entitled to keep \$12.50 of the time payment fee under Section 133.103 of the Local Government Code. Ten percent (or \$2.50) shall be used for the purpose of improving the efficiency of the administration of justice, and the city shall prioritize the needs of the court in spending that money. The judicial support fee, pursuant to Section 133.105 of the Local Government Code, allows for sixty cents (\$.60) of each conviction to go into the city’s general fund to “promote the efficient operation” of the court. Lastly, the court security fund statute, Article 102.0169 of the Code of Criminal Procedure, allows for the municipal court building security fund to be used for the continuing education on security issues for court personnel and security personnel.

# MUNICIPAL COURT CLERK CERTIFICATION PROGRAM

## WHAT IS IT?

The Municipal Court Clerk Certification Program was established to encourage professional development and educational growth for court support personnel. It is sponsored by the Texas Court Clerks Association (TCCA) in cooperation with the Texas Municipal Courts Association (TMCA), the Texas Municipal Courts Education Center (TMCEC), and Texas State University-San Marcos.

The certification program is comprised of three levels. Participants will achieve certification upon successful completion of each of the three levels, earning the titles of Certified Court Clerk Level I, Certified Court Clerk Level II, and Certified Municipal Court Clerk.

## Education

The applicant must provide proof that within three years preceding application, the applicant has successfully completed 40 hours of training sponsored by TCCA, TMCA, or TMCEC or an alternate approved provider; or a combination thereof.

## Certification Exams

Participants in the program must pass a certification test to advance at each of the three levels. The tests are offered throughout the year. The 2010-2011 test schedule and test application can be found on the TMCEC website: [www.tmcec.com](http://www.tmcec.com). An individual may retake an exam until a passing grade is obtained. Level I and Level II exams have study guides, which can be purchased from TMCEC or printed here: [http://www.tmcec.com/Programs/Clerks/Study\\_Guides](http://www.tmcec.com/Programs/Clerks/Study_Guides). The Level III exam is taken from 15 management books. For Level III, study questions are available online at [www.tmcec.com](http://www.tmcec.com).

## Application

Once the participant has completed 40 hours of education, and passed the exam, an application must be submitted. Applications must include proof of education hours, and proof of passing the exam. Applications can be found on the TMCEC website ([www.tmcec.com](http://www.tmcec.com)) and submitted to the Program Coordinator at TMCEC.

## Continuing Education Requirement

In order to maintain certification at each of the three levels, it is required that the continuing education requirement be met each academic year. In order to maintain the Level I and Level II certification, 12 hours of continuing education must be completed each academic year (September 1-August 31). For those who are Certified Municipal Court Clerks, the continuing education requirement is 20 hours each academic

year.

Clerks certified at each level must submit proof of their continuing education hours in order to maintain certification. A Municipal Court Clerk Certification Renewal Application must be completed and returned to TMCEC with the required documentation prior to September 1st each year.

## WHAT'S NEW?

**Renewals:** Starting in FY 2011, participants who have completed their continuing education requirements for the previous year, but fail to timely file their renewal application by the August 31st deadline, will be given two options to become compliant. The first option is to pay a \$50 late filing fee and then complete the standard 12 hours of continuing education in the following year. The second option is to complete 24 hours (for Level I and II) or 40 hours (for Level III) of education in the following year. Both options will satisfy the requirements. Note: This policy only applies to participants who completed their education hours, but did not timely file their renewal application.

**Level III Reading List:** Starting April 1, 2011, a new book will be added to the Level III Reading List. *Protecting Court: A Practitioner's Guide to Court Security* by Jimmie H. Barrett will replace *Court Security: A Guide for Post 9-11 Environments*. Participants will have until December 31, 2011 to choose which book they would like to test under. Starting January 1, 2012 testing will only cover *Protecting Court: A Practitioner's Guide to Court Security*.

## Approved Certification Courses

Two new courses have been approved for Certification Hours: Texas Department of Licensing and Regulation (TDLR) Approved Courses for Court Interpreters and Teen Court Conference (up to 12 hours).

**CALI:** The number of CALI hours (or other approved online courses) that can be used for continuing education hours has been increased from four to seven (7).

**Webinars:** TMCEC Archived Webinars can now be used for Clerk Certification Credit (up to seven hours). NCSC webinars, live or archived, can also be used for Clerk Certification Credit (up to seven hours).

**Inactive CMCC:** Beginning in FY 2011, any clerk who has achieved Level III, CMCC status, but has become inactive, will be allowed to reinstate their certification by completing 40 hours of education. Six of those hours must come from TMCEC's Legislative Update and all 40 hours

of education must be from within the preceding three years. Certificates of attendance, along with a renewal application, must be submitted to TMCEC. Note: The rule only applies to Level III.

**Participants no longer employed by a municipal court:**

If you are no longer employed by a municipal court, you will no longer be contacted with reminders for certification renewal purposes. Sole responsibility for verifying and maintaining standing lies with the participant.

**TMCEC Pre-Conference Preparation Courses:**

Beginning September 1, 2011, study guides will no longer be provided at Preparation Courses. Study guides can be printed free of charge from [www.tmcec.com](http://www.tmcec.com).

**How do I become certified?**

In order to become certified at a particular level, a clerk must:

1. Pass the test for the level desired,
2. Fulfill the educational requirements, and
3. Fax or mail a completed application with the required documentation to TMCEC.

**What does a completed application packet include?**

A completed application packet must include:

1. A completed application for certification;
2. Proof of passing the exam within three years preceding the application for certification; and
3. Proof of completion of educational requirements within the three years prior to applying (which may include the following: certificates of completion from TMCEC training seminars; certificates of completion from other qualified training seminars; and/or proof of attendance at annual conferences of the TCCA or TMCA).

**When are the tests?**

TCCA administers exams usually from 1:00 – 5:00 p.m. after the close of each TMCEC regional seminars and at the annual TCCA conference.

**What are the continuing education requirements?**

Each academic year (September-August), Level I and Level II certified court clerks must attend 12 hours of continuing education. CMCC, Level III certified court clerks, must attend 20 hours of continuing education.

**Which agencies are approved providers for continuing education?**

TCCA, TMCA, TMCEC, Institute for Court Management, National Center for State Courts, TDLR Approved Court Interpreter Training, Teen Court Conference (12 hours), and National Association of Court Managers are all

approved providers.

**What happens if I do not meet my continuing education requirements?**

If the continuing education requirements are not met for an academic year, including submitting the renewal application and documentation to TMCEC, those persons are not viewed as being certified for that year. In order to maintain certification, Level I and Level II certified clerks will be required to attend 24 hours of education the following year and Certified Municipal Court Clerks (Level III) will be required to attend 40 hours of education the following year, subject to TCCA Education Committee approval.

If the continuing education requirements are not met for two or more academic years, including submitting the renewal application and documentation to TMCEC, those persons lose their certification and will be required to re-take the exam and re-apply for certification at Level I, regardless of prior certification.

**How much will it cost to get Level I certification? My city wants to know so they can include it in the budget.**

*Optional Costs:*

TCCA Annual Membership - \$40 ([www.texascourtclerks.org](http://www.texascourtclerks.org))  
Study Guides:

- Level I – \$25 + \$3 Shipping
- Level II – \$25 + \$3 Shipping

Pre-conference Preparation Courses:

- Level I – \$25 per session (includes study guide)
- Level II – \$25 per session (includes study guide)
- Level III Books: Approximately \$500

Study guides may be downloaded at no charge from the TMCEC web site: [www.tmcec.com](http://www.tmcec.com), and Level III books may be borrowed from TMCEC for a \$100 deposit.

*Mandatory Costs:*

Test Registration Fees:

- Level I – \$50 for TCCA members, \$90 for non-members
- Level II – \$50 for TCCA members, \$90 for non-members
- \$25 per part for re-tests
- Level III – \$50 for TCCA members, \$90 for non-members
- \$25 per part for re-tests

Assessment Clinic:

- \$100 registration fee (for Level III certification)

Court Administrators Seminar:

- \$100 registration fee (for Level III certification)

These are estimates only and subject to change based on costs of materials and grant restrictions for any given year.

– TMCEC –

1609 Shoal Creek Blvd., Austin, Texas 78701  
Telephone: 800.252.3718 Fax: 512.435.6118  
[tmcec@tmcec.com](mailto:tmcec@tmcec.com) [www.tmcec.com](http://www.tmcec.com)

**TEXAS MUNICIPAL COURTS  
EDUCATION CENTER  
1609 SHOAL CREEK BLVD., SUITE 302  
AUSTIN, TX 78701  
www.tmcec.com**

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### **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**

## **REMEMBER TMCEC**

TMCEC Board of Directors and staff members hope that you will consider making a contribution to the TMCEC 501(c)(3) foundation. These funds will be used to support judicial education for municipal judges and court support personnel in Texas.

TMCEC is a 501(c)(3) non-profit organization. Contributions are tax deductible on the donor's federal income tax return. TMCEC received a "Letter of Determination" in 2006, after making application to become a 501(c)(3). If you wish to contribute, please send checks payable to the Texas Municipal Courts Education Center, 1609 Shoal Creek Blvd., Suite 302, Austin, Texas 78701. Please indicate in the bottom left hand corner of the check, or in a cover letter, that this is a contribution to the 501(c)(3). Thank you.

