

Role in the Court

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INTRODUCTION

The most important source of municipal court authority and jurisdiction is the Texas Constitution, which gives the Legislature the power to establish courts and set their jurisdiction. The Legislature exercised this power and created municipal courts in the Corporation Court Law of 1899, which has since been codified in the Government Code. The authority and jurisdiction of municipal courts can be found in various statutes and codes. In some instances, duties are prescribed by state law; in others, they are prescribed by city charter or city ordinance. Most daily work assignments, however, are generally based on policies or procedures authorized by the judge and administered by the court clerk.

In the criminal justice system, there are several different categories of duties or responsibilities that may be performed by officers of the court. These include ministerial, magistrate, judicial, and prosecutorial duties. Court clerks should know who can legitimately perform these different duties. Statutes do not provide much direction, but clerks can look at a judge's judicial authority to get a clearer picture of the relationship between the authority of a judge and that of a clerk.

This chapter serves as an overview of the role of the clerk in municipal court and introduces the "authorities and duties" of specific officers of the court.

PART 1 OFFICERS OF THE COURT

A. Basic Municipal Court Organization

Although some of the fundamental elements of municipal courts in Texas are authorized or required by law, municipalities have wide latitude in prescribing the organizational structure of the court. In Texas, cities are created under statutes that make them either home-rule or general-law cities. Home-rule cities are empowered to enact charter and ordinance provisions not inconsistent with state law. These provisions prescribe structural details of local court organization. A city must have a population of at least 5,000 in order to become a home-rule city. Texas statutes also provide for general-law cities, those with a population of less than 5,000 or more than 5,000 without a charter, with some choices regarding the organization of the court. Thus, numerous variations exist throughout the State regarding court organization. The organizational structure of a large court with dozens of clerks could be entirely different from the organizational structure of a small court with a single court clerk. In general terms, however, officers of the court in municipal courts consist of the following: judges, court clerks, prosecutors, bailiffs or court security officers, and defense counsel.

B. The Judge

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

1. Qualifications and Selection

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

judge shall be known as the “judge of the municipal court” unless the municipality by charter provides for another title. Sec. 29.004(a), G.C.

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

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

	High School Diploma	Degree	Advanced Degree	Required License or Certificate	Specific Training
Municipal Court Clerk	✓				
Attorney	✓	✓	✓	✓	
Judge (Non-Record Court)	✓				✓
Judge (Court of Record)	✓	✓	✓	✓	✓

There are no statutory qualifications for a municipal judge of a non-record municipal court; the municipality may establish the qualifications for the judge by charter or ordinance. However, statutory qualifications apply to a municipal court of record, in which case the judge must be a resident of Texas, a U. S. citizen, a licensed attorney in good standing, and have two or more years of experience in the practice of law in this State. Sec. 30.00006, G.C.

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

2. Appointment and Term of Office

The method of selection of a municipal judge depends on the individual city’s charter or ordinance. Most municipal judges, unlike other state court judges, are appointed rather than elected. A municipal judge’s term of office is two years unless the municipality provides for a longer term. Article XI, Section 11 of the Texas Constitution allows both home-rule and general-law cities to provide for terms not to exceed four years. Many Texas cities have provided for this, either in the city charter or by majority vote, depending on the city type. For municipal courts of record, however, the term of office for judges is established by the ordinance that created the office, for a definite term of two or four years. Sec. 30.00006, G.C.

29.005, G.C. Term of Office

The judge of a municipal court serves for a term of two years unless the municipality provides for a longer term pursuant to the Texas Constitution.

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

If the office of the municipal judge becomes vacant, the governing body of the city shall by appointment fill a vacancy for the unexpired term of office. Sec. 29.011, G.C. City secretaries are required to notify the Texas Judicial Council of the name of each person who is elected or appointed as mayor, municipal court judge, or clerk of a municipal court within 30 days of election or appointment. If the office becomes vacant, the city secretary, or person responsible for maintaining the records of the city's governing body, is required to notify the Texas Judicial Council of the vacancy within 30 days. Sec. 29.013, G.C.

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

3. Compensation

Municipal judges are compensated by the municipality, and the municipality sets the compensation amount. Although municipal judges are included in the definition of "state judge" for purposes of certain statutes regarding public information and records, the laws that set compensation of county, district, or appellate judges do not pertain to municipal judges.

4. Oath of Office

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

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

- a judge, retired judge, or clerk of a municipal court;
- a judge, retired judge, senior judge, clerk, or commissioner of a court of record;
- a justice of the peace, a retired justice of the peace, or a clerk of a justice court;
- a notary public;

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

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

5. Duties

Judges have the authority to perform judicial, magistrate, and ministerial duties. Judicial duties require an exercise of judgment, a decision of a question of law or fact, or a choice of alternatives. A question of law is an issue involving the application or interpretation of a law. A question of fact is an issue involving resolution of a factual dispute. The choices made by judges do have limits, however, as judges are required to operate within the bounds of the law. Judicial decisions must be lawfully authorized choices or alternatives.

Judicial duties involve the exercise of judicial discretion. This authority is only given to the judge. Although court clerks work closely with the judge, and may have been delegated certain other duties, the clerk has no authority to exercise judicial discretion. Furthermore, a judge cannot legally delegate any duty that requires judicial discretion. The judge's discretion to make decisions is based on facts and guided by law. It is the power to determine what, under existing circumstances, is right or proper in each case. Judicial discretion is not unrestrained, though, and must be exercised to give effect to the purpose of the law while remaining within the boundaries of what is legally permitted.

Judicial Discretion

The exercise of judgment by a judge based on what is both fair under the circumstances and within the established principles of the law.

In the capacity of a trial court judge, the judge must be impartial and ensure that the court upholds due process. As previously stated in Chapter 1, the judge is not an adversary in the proceeding. He or she must decide questions only on the basis of the law. He or she must never assume the role of prosecutor or of defense counsel nor act as a special advisor to the police or a rubber stamp for law enforcement. In addition, even though the judge is selected and appointed by the city, he or she should never be influenced by the city to produce revenue or to enforce laws selectively. When cases proceed to trial, only the evidence presented and the applicable laws are legitimate bases for any judicial decision. Accordingly, the

judge must allow the prosecution and the defense, as well as all other components of the system, to perform their duties vigorously, but always within the limits allowed by law.

All judges in Texas are also magistrates. Art. 2.09/2A.151, C.C.P. Magistrate authority is additional power granted by the Texas Legislature. This means that a judge essentially wears two hats: judge and magistrate. A judge for the City of Georgetown, for example, could also serve the role of magistrate for Williamson County, the county in which Georgetown is located. Although magistrate duties are broad and scattered throughout various statutes and codes, the general duty of every magistrate is to preserve the peace within his or her jurisdiction by issuing process intended to help prevent and suppress crime and to initiate the arrest of offenders in order that they may be brought to punishment. Art. 2.10/2A.152, C.C.P. Magistrates act as the gatekeeper to the criminal justice system.

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

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

C. The Court Clerk

Court clerks look to the judge for direction in matters pertaining to overall court policy and judicial procedures. The clerk's primary responsibilities include processing the clerical work of the court; administering daily operations of the court; maintaining court records; coordinating the scheduling of cases; and performing other duties as may be outlined in the city charter or ordinances. In the absence of more detailed, written administrative duties for a clerk by the governing body, the judge may assign various administrative duties. Although court clerks do not have authority to exercise judicial discretion, they may carry out the duties that are legally delegated from the judge. This may include tasks such as maintaining the court's docket or providing for internal controls of cash handling in the court. In a nutshell, the court clerk is required to "keep minutes of the proceedings of the court, issue process and generally perform the duties for the municipal court that a county clerk performs for the county court." Sec. 29.010(c), G.C.

1. Qualifications and Selection

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

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

For a municipal court of record, the city by ordinance shall provide for the appointment of a clerk. The city may provide deputy clerks, warrant officers, and other personnel as needed for the

proper operation of the courts, and the clerks and other court personnel perform their duties under the direction and control of the presiding judge.

Cities have broad discretion regarding the clerk's title, and titles vary across the State. Generally, there is one clerk of the court (either appointed or elected), and the city can hire additional clerks with titles such as clerk or deputy clerk. The city council may also establish the qualifications for the position of the court clerk. Qualifications vary greatly depending on the size and workload of the court, the nature of the cases processed, the size of the staff, how the workload is distributed, and whether the court's work is done manually or by computer. Knowledge of court functions and procedures, advanced clerical skills, experience in dealing with the public, knowledge of accounting or bookkeeping, office and personnel management skills, and knowledge of case flow management are most desirable.

2. Term of Office

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

If the office of the municipal court clerk becomes vacant, the governing body of the city shall by appointment fill a vacancy for the unexpired term of office. Sec. 29.011, G.C. City secretaries are required to notify the Texas Judicial Council of the name of each person who is elected or appointed as mayor, municipal judge, or clerk of a municipal court within 30 days of election or appointment. If the office becomes vacant, the city secretary, or person responsible for maintaining the records of the city's governing body, is required to notify the Texas Judicial Council of the vacancy or appointment within 30 days. Sec. 29.013, G.C.

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

3. Compensation

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

4. Oath of Office

Article XVI, Sections 1(a) and 1(c) of the Texas Constitution require all officials who are elected or appointed to take an oath of office. The oath is retained with the official records of the office,

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

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

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

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

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

5. Duties

The responsibility of the court clerk's position and the scope of duties have greatly increased in recent years. The professionalism, timeliness, and accuracy of the court clerk's actions are important to the proper operation of the municipal court. As such, the court clerk can have a tremendous impact on the perception of the justice system. The court clerk likely has more contact with individual defendants in municipal courts on a daily basis than the judge,

Legal Advice

Legal advice is a statement that interprets some aspect of the law, recommends a course of conduct, or applies the law to specific facts.

prosecutor, or even law enforcement. Consequently, the public will develop a perception of municipal courts largely based on interactions with the court clerk.

Due process and the fair treatment of all court users require that the court clerk provide accurate legal information to defendants. This includes, for example, information on the defendant's options that the court clerk is permitted to legally provide. Every court user has the right to know the court's procedures. The court clerk must be careful, however, to avoid providing legal advice. The line is not always clear between legal information and legal advice, but essentially legal advice is what a defendant would receive from an attorney. Only licensed attorneys may provide legal advice to any individual. If a clerk provides legal advice, he or she would potentially be violating not only ethics rules, but also various state criminal laws.

The court clerk's primary duties typically involve some aspect of court administration. These duties vary widely depending on both the size of the city and the volume of the court. Administratively, the court clerk is responsible for seeing that the court's papers are accurately processed and any duties delegated by the judge are performed in a timely manner. While the clerk's duty is to serve all court users equally in the legal system, the clerk must remain independent of any particular user. This means, for example, that the court clerk must be as courteous and helpful to defense lawyers as he or she is to the local prosecutor. Clerks may have a greater knowledge of certain aspects of the law or municipal court procedure than even certain attorneys, but clerks should be careful never to attempt to influence the outcome of any case.

D. The Prosecutor

Art. 45.201(d)/45A.006, C.C.P.

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

The term "prosecutor" is broadly used across all levels of criminal courts in Texas. The term refers to the representative of the State of Texas, who is tasked with prosecuting the State's criminal laws. The individual prosecutor's formal job title generally depends on what level of jurisdiction that person is working within. With some exceptions, an assistant district attorney typically handles felony criminal offenses in district court, an

assistant county attorney handles misdemeanors punishable by confinement in county court, and so on. Although municipal prosecutors may also work as the city's legal counsel as an assistant city attorney, he or she does not technically represent the city when appearing in a municipal court. Instead, he or she represents the State of Texas and is tasked with the primary duty not to convict but to see that justice is done. Art. 45.201(d)/45A.006, C.C.P. In the broad view, the prosecutor represents the public's interest in enforcing the criminal laws of the state while acting in a manner that maintains public respect for the system. This is often a balancing act for prosecutors seeking to see justice fairly administered while still operating within an adversarial system.

Some cities have in-house city attorneys and others contract with solo practitioners or law firms. In this regard, the municipal prosecutor is unique in the Texas justice system in that the prosecutor may practice an entirely different type of law, even criminal defense, when not acting in the role of the municipal court's prosecutor. The prosecutor may also be the county attorney of

the county in which the municipality is situated if the county attorney so desires. In this case, the county attorney is not entitled to receive any compensation.

From a practical standpoint, prosecutors are the gatekeepers that decide whether criminal offenses are filed in court in the first place. Many prosecutors also act as police advisors, and one of the many duties of the prosecuting attorney is to decide if there is sufficient evidence to proceed on any given case. Judges and clerks do not have the authority to file any new criminal offenses in court, including the criminal offense of Failure to Appear. A court may not proceed on such a charge without explicit authority from the prosecutor. The prosecutor will also meet with opposing counsel or pro se defendants concerning the case, negotiate plea agreements, and conduct trial. Article 45.201/45A.005 of the Code of Criminal Procedure only requires an attorney representing the State to be present to conduct prosecutions at bench or jury trials. Tex. Atty. Gen. Op. GA-0067 (2003). Thus, interestingly, prosecutors may be present, but are not required when a defendant makes an appearance to enter a plea. There are also no provisions in current law that require a prosecutor to be present at show cause hearings or indigency hearings. These hearings are solely within the court's authority and duty.

1. Qualifications and Term of Office

The city attorney's term, subject to conditions regarding removal, may be set by ordinance, charter, or the agreement for employment. Deputy city attorneys assigned as municipal court prosecutors work at the pleasure and discretion of the city attorney. The prosecutor must be a licensed attorney in Texas, which means he or she has been admitted to the State Bar of Texas and may practice in the state courts.

Minimum qualifications to become an attorney in Texas generally include seven years of education after high school. This includes three years of law school resulting in the Doctor of Jurisprudence (JD) degree. Attorneys must also pass the Texas Bar Exam, a 2 ½ day exam covering state, federal, and common law topics.

Practice Note

All attorneys that are licensed to practice law in Texas must maintain a profile with certain information through the State Bar of Texas. This information is available in a public database on the internet at no charge. Information available through the database includes contact information for the attorney and whether he or she is currently licensed and eligible to practice in Texas. The database is located at www.texasbar.com.

2. Duties and Responsibilities

Just as municipal court clerks perform many of the same duties as their counterparts at the county and district levels, the city prosecutor performs a similar role as the prosecuting attorney in other criminal trial courts. A big difference is that county and district court prosecutors typically have distinct case intake protocols and may have staff and clerks of their own assisting in case preparation. In many Texas cities, the municipal prosecutor will not have a vast support network. The prosecutor's time for case preparation and consultation with police officers, witnesses, and complainants is usually more limited than their counterparts in

Aguirre v. State,
22 S.W.3d 463 (Tex.
Crim. App. 1999)

The State not only has an interest (in the prosecution of criminal offenses in municipal court); its interest is paramount.

the higher courts due in part to the greater case volume in municipal courts.

The prosecutor ultimately represents the State of Texas when appearing in municipal court. To this end, as a representative of the state, the prosecutor's role is always to seek justice. This may not only include seeking convictions where appropriate, but also deciding which cases to pursue or even to seek dismissal where there is insufficient evidence. It is solely the prosecutor's duty to decide when to file a complaint or advise peace officers in case preparation. Prosecutors, however, should be mindful that they cannot dismiss charges or cases, except upon written grounds and with the judge's approval. Art. 32.02, C.C.P.

Duties of a municipal prosecutor include:

- investigating the facts surrounding alleged offenses and deciding whether to file charges;
- preparing and drafting complaints (the clerk may assist the prosecutor in preparing routine complaints where that preparation is a ministerial duty; however, the ultimate responsibility for the legal sufficiency and accuracy of complaints belongs to the prosecutor);
- administering oaths to persons filing complaints before the court (Art. 45.019(e)/45A.101(e), C.C.P.);
- preparing and presenting the State's case at trial;
- arranging for the appearance of the State's witnesses, including requests for subpoenas and attachments;
- filing motions with the court that may be necessary to present cases;
- requesting dismissal of cases under proper circumstances;
- advising the police department in case preparation, legal procedures, and requirements, and other legal questions; and
- discussing pending cases with defendants or, if represented by counsel, with their attorneys prior to the courtroom hearing.

With the county attorney's consent or assistance, prosecutors are statutorily allowed to prosecute cases on appeal out of a municipal court. Art. 45.201/45A.005, C.C.P. The prosecutor may make arrangements with the county attorney or criminal district attorney and the county judge to prosecute municipal court appeals.

E. The Bailiff

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

1. Qualifications

Chapter 53 of the Government Code mandates the appointment of bailiffs in certain courts in Texas; however, there is no universal statutory requirement for municipal courts to have a bailiff. There are a few exceptions for cities that have statutory courts of record. Even though Texas law

does not require the use of a bailiff in most municipal courts, it is the best practice to have at least one bailiff.

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

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

Practice Note

Any person that provides security for the municipal court is required to hold a court security officer certification issued by a training provider approved by the Texas Commission on Law Enforcement (TCOLE). The training consists of 8 hours of education on specific court security topics. Further information on this training, as well as additional resources, may be found online at <https://www.tmcec.com/programs/court-security-officer/>.

2. Duties and Responsibilities

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

F. The Warrant Officer

It is the duty of every peace officer to preserve the peace within the officer's jurisdiction using all lawful means. Art. 2.13/2A.051, C.C.P. Peace officers engage in various law enforcement duties when arresting offenders without a warrant (i.e., issuing a citation or making a custodial arrest for an offense committed in view), applying to a magistrate for an arrest warrant when the officer has probable cause to believe a person has committed an offense, and executing lawful process issued to the officer by a magistrate or a judge.

The primary role of the warrant officer is to serve all processes or papers issued by a municipal court; in other words, to make arrests on warrants or capiases pro fine or deliver summonses to the parties to whom they are addressed. The Code of Criminal Procedure provides that all process issuing out of the municipal court shall be served by a police officer or city marshal

under the same rules that apply to service by sheriffs and constables of process issuing out of justice courts. Art. 45.202/45A.103, C.C.P. Failure, neglect, or refusal to serve process may make the responsible officer liable for a fine of \$10-200 for contempt of court. Art. 2.16/2A.055, C.C.P.

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

G. Defense Counsel

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

In practice, the majority of municipal court defendants appear in court as a pro se defendant. This means that they appear on their own behalf without an attorney. If a defendant wants to be represented by another individual, the defendant has that right, but that person must be a licensed Texas attorney. Every attorney licensed in Texas can be found through the State Bar of Texas, at <http://www.texasbar.com>. Information found on this website includes the attorney's bar number and whether he or she is currently eligible to practice in Texas.

Attorney at Law Representation

Defendants in Texas have the right to be represented by an attorney in any criminal proceeding.

***Harkins v. Murphy & Bolanz*, 112 S.W. 136 (Tex.Civ.App.- Dallas 1908, writ dismiss'd)**

A power of attorney does not authorize a person to act as an attorney at law in a court proceeding.

Although there is a right to represent oneself in court as a pro se defendant, a person must be a licensed attorney at law in order to represent another person in court proceedings. Family members, parents, and friends cannot legally represent defendants in court unless the person is a licensed Texas attorney. Despite its name, a power of attorney is not an instrument that would allow a non-attorney to represent another person in municipal court. A power of attorney only allows another person to act as an attorney in fact. In simplest terms, this means that the person may handle certain business transactions for another individual. To represent another person in court proceedings, a person must be an attorney at law. *Harkins v. Murphy & Bolanz*, 112 S.W. 136 (Tex. Civ. App.—Dallas 1908, writ dismiss'd); *Elwell v. Mayfield*, 2005 Tex. App.

LEXIS 6356, 2005 WL 1907126, at 3 (Tex. App.—Waco Aug. 10, 2005, pet. denied).

Attorney at law means that the person is a licensed attorney. Practicing law without a license is against the law, regardless of the person's relationship to the defendant, and in some situations could result in criminal charges for the unauthorized practice of law.

To protect the rights of defendants and ensure that communications are made to any attorney of record, a best practice is to require attorneys to submit a letter of representation to the court. The

letter typically will indicate that a person is represented by counsel, ask that court communications be sent to the attorney, and provide contact information. Once a court has a letter of representation, the court must then communicate with the defendant through his or her attorney. This will also help prevent any communication by the judge or prosecutor with a represented person without their counsel present.

True or False

1. The judge plays an adversarial role in court. _____
2. If there is not a prosecutor, the judge or the clerk should serve as the prosecutor and represent the State. _____
3. The prosecutor, with the consent of the judge, has the authority to dismiss a case. _____
4. The prosecutor is responsible for preparing and drafting complaints and may ask the clerk for assistance. _____
5. A court clerk may exercise judicial discretion. _____
6. What is the longest term of office that a city may set for municipal judge? How may a city provide for this term of office? _____

7. May a non-attorney parent represent his or her child in court if that person is named in a power of attorney? Why or why not? _____

8. What qualifications are required to practice law in Texas? _____

9. How often must the statement of officer and oath of office be filed? _____

PART 2 AUTHORITY OF A JUDGE

A. Judicial Duties and Responsibilities

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

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

Hence, a judge is not permitted to delegate to a court clerk a duty such as taking a plea or setting a fine.

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

1. Judicial Duties and Responsibilities that May Not Be Delegated

The list below, although not exhaustive, provides examples of judicial duties and responsibilities that may not be delegated to a clerk.

Judicial Duty or Responsibility	Cite
Set bail to secure the defendant’s appearance after a case has been filed.	Article 45.016/45A.107, C.C.P.
Issue arrest warrants for defendants whose cases are filed.	Article 45.014/45A.104, C.C.P.
Issue a capias for a defendant after a charge has been filed.	Article 23.04, C.C.P.
Issue a summons for a defendant when requested by the prosecutor.	Article 23.04, C.C.P.
Issue a summons for the parent of a person under 17.	Articles 45.0215/45A.452, C.C.P.
Forfeit bail.	Articles 4.14 and 45.044/45A.256, C.C.P.; Section 29.003(e), G.C.
Take and accept pleas of guilty, nolo contendere, or not guilty.	Articles 27.14, 27.16, 45.021/45A.151(a), 45.0215/45A.452, 45.022/45A.153(a), and 45.024/45A.152, C.C.P.; Attorney General Opinion H-386
Enter a plea of not guilty for a defendant who refuses to plead.	Article 45.024/45A.152, C.C.P.
Grant a motion for new trial made after a defendant entered a plea while detained in jail.	Article 45.023/45A.154(b), C.C.P.
Conduct pre-trial hearings.	Article 28.01, C.C.P.
Grant continuances.	Chapter 29, C.C.P.
Conduct trials.	Article 45.025/45A.155, C.C.P.
Issue a writ to summon a venire (jury panel).	Article 45.027/45A.156, C.C.P.
Rule on challenges to the array (membership) of the jury pool.	Article 35.07, C.C.P.
Form the jury and administer the oath.	Article 45.030/45A.159(b), C.C.P.
Charge the jury.	Article 45.033/45A.163, C.C.P.

See that the verdict is in proper form and render judgment and sentence following a jury trial.	Article 45.036/45A.166, C.C.P.
Enter judgments.	Article 45.041/45A.251, C.C.P.
Set fines.	Article 45.041/45A.251, C.C.P.; Attorney General Opinion H-386
Grant deferred disposition.	Article 45.051/45A.302, C.C.P.
Grant a driving safety course.	Article 45.0511/45A.352, C.C.P.
Grant teen court.	Article 45.052/45A.401, C.C.P.
Determine how a defendant is ordered to pay the fine and costs (time payment, extensions, community service).	Articles 45.041/45A.251 and 45.049/45A.254, C.C.P.
Grant community service or tutoring in satisfaction of the fine or costs for juvenile defendants.	Articles 45.049/45A.254 and 45.0492/45A.459-45A.460, C.C.P.
Grant jail-time credit.	Articles 42.03, 45.041/45A.251, and 45.048/45A.262, C.C.P.
Determine indigence.	Articles 43.091, 45.041/45A.252, 45.046/45A.261, 45.048/45A.262, and 45.049/45A.254, C.C.P.
Waive the fine and court costs.	Article 43.091, C.C.P.
Rule on a motion for new trial.	Article 45.038/45A.201, C.C.P.; Section 30.00014, G.C.
Set and approve appeal bonds.	Article 45.0425/45A.203, C.C.P.
Issue a capias pro fine.	Article 45.045/45A.259, C.C.P.
Commit a defendant to jail for unpaid fines/costs.	Article 45.046/45A.261, C.C.P.
Conduct stolen or seized property hearings.	Chapter 47, C.C.P.
Dismiss cases when required by law or upon a prosecutor's motion.	Article 32.02, C.C.P.
Inform a juvenile and any parent in open court of the juvenile's expunction rights and provide them with a copy of the law.	Article 45.0216/45A.463, C.C.P.
Order convictions or records expunged.	Articles 45.0216/45A.463, C.C.P.; Article 55.02/55A.201, C.C.P.; Section 106.12, A.B.C.; Section 161.255, H.S.C.
Hold a person in contempt.	Article 45.050/45A.461, C.C.P.; Section 21.002, G.C.

2. Consequences of Delegating Judicial Duties or Responsibilities

If a judge delegates a judicial duty or responsibility to a court clerk, there can be consequences. Several cases illustrate such consequences.

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

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

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

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

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

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

B. Magistrate Duties

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

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

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

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

C. Ministerial Responsibilities

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

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

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

D. Judicial Authority

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

1. Administering Oaths

Article 45.019/45A.101 of the Code of Criminal Procedure grants power to administer oaths to a person swearing to a complaint before the municipal court. The following court officials have authority to administer this oath:

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

Section 602.002 of the Government Code provides authority for a judge, retired judge, or clerk of a municipal court to administer any oath. In general-law cities, Section 29.006 of the Government Code provides that a judge appointed to act for the municipal judge, who is

temporarily unable to act, has all powers and duties of the office. In home-rule cities, Section 29.007 of the Government Code provides that associate judges have the same powers as the presiding judge. Therefore, associate or alternate judges may administer oaths. It makes sense that a judge could administer an oath because the judge themselves would have taken an oath upon appointment or election.

2. Dismissing Cases

a. In General

Under common law, prosecutors typically have the power to dismiss cases, absent specific statutory authority to the contrary. Texas law generally follows that common law rule but includes judges in the dismissal process. Art. 32.02, C.C.P. In the Texas model, dismissals may occur through constitutional or statutory authority vesting a trial court with dismissal power, or on the motion of the prosecuting attorney. *State v. Morales*, 804 S.W.2d 331 (Tex. App.—Austin 1991, no pet.). Typically, courts may not dismiss without the prosecutor’s consent, and prosecutors cannot dismiss without the court’s approval. *State v. Johnson*, 821 S.W.2d 609 (Tex. Crim. App. 1991).

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

b. Mandatory v. Discretionary Judicial Duty to Dismiss

Some statutes create a mandatory judicial duty to dismiss a criminal charge. These include where the defendant is entitled to a dismissal pursuant to law, such as upon successful completion of a deferred disposition, driving safety course, or teen court program. Arts. 45.051/Subchapter G, Chapter 45A, 45.0511/Subchapter H, Chapter 45A, and 45.052/45A.401, C.C.P. In these instances, judges shall dismiss the charge in the absence of a prosecutor’s motion. Arguably, a judge could also dismiss a case without involvement from the prosecutor when the court lacks jurisdiction over the offense because it is either not a fine-only offense or was committed outside the court’s territorial jurisdiction.

Other statutes give the judge discretion to decide whether a case could be dismissed, even without involvement from the prosecutor. These statutes are commonly referred to as “compliance dismissals” and are available when the defendant remedies certain defects. Most of the compliance dismissals available to defendants are discretionary, meaning it is up to the judge whether to accept the proof of remedying the defect and dismiss upon payment of some administrative fee set by statute. However, there are a few compliance dismissals that provide for a mandatory dismissal if the defendant meets certain criteria. Compliance dismissals are discussed at length in the *Traffic Law* chapter of this Study Guide as the statutes that authorize such dismissals are located in the Transportation Code.

Judges should be cautious whenever exercising their power to dismiss. The general rule is that a judge’s authority to dismiss is limited, and without express authority to dismiss, the judge should never dismiss without a motion from the prosecutor. Remember, it is the prosecutor’s case on behalf of the State of Texas; therefore, the only person who can choose to dismiss is the

prosecutor. In no case should the clerk or a peace officer attempt to dismiss a case. Such practice could amount to a federal and state crime for “ticket fixing.”

3. Controlling the Courtroom

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

4. Marriages

Section 2.202 of the Family Code outlines who has the authority under Texas law to perform a marriage ceremony. All current, former, or retired federal or state judges have such authority. This includes current, former, or retired municipal judges.

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

E. Disqualification and Recusal

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

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

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

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

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

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

Procedure 18b(2) states that a judge shall recuse when:

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

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

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

10.	When can a mayor in a general-law city be the <i>ex officio</i> municipal judge? _____ _____
11.	What governs the selection of municipal judges in a home-rule municipality? _____ _____
12.	What must a general-law city do when a municipal judge is temporarily unable to act? _____ _____ _____
13.	What is a question of law? _____
14.	What is a question of fact? _____
15.	What is judicial discretion? _____
16.	When does a judge not have discretion to perform an action? _____ _____

17. Which kind of duty may a judge delegate to a court clerk? _____

True or False

18. Clerks may set and take bail from a defendant. _____
19. The clerk may ask the defendant how he or she wants to plea. _____
20. When a defendant calls the court to request that the clerk reset his or her case to another trial date, the clerk may grant the continuance and reset the case. _____
21. Clerks may not conduct trials. _____
22. Clerks may set fines. _____
23. Clerks may grant extensions and time payment plans to defendants. _____
24. Clerks may require a defendant to pay a fine by performing community service. _____
25. The judge has authority to waive all or part of the fine or costs if the defendant is indigent or does not have sufficient resources or income to pay all or part of the fine or costs and discharging the fine or costs by community service or installment payments would impose an undue hardship. _____
26. Clerks may not issue arrest warrants. _____
27. Municipal court clerks have the authority to issue a capias. _____
28. Only a judge may issue a summons for a defendant. _____
29. When a judge is not available, the clerk may grant deferred disposition or teen court. _____
30. Judges can permit clerks to perform judicial duties and then later adopt the actions of the clerk. _____
31. Municipal court clerks may stamp the judge's signature on court documents when the judge is on vacation. _____
32. When a judge is in the office part-time, the clerk may use the judge's signature stamp to sign judgments on cases in which a defendant pays a fine at the clerk's office. _____
33. Municipal court clerks may stamp the judge's signature on mental health commitments when the judge is not available and it is an emergency. _____
34. Municipal court clerks cannot be held liable for performing a judicial duty if the judge requires the clerk to perform the duty. _____
35. Municipal judges are magistrates. _____
36. Municipal judges may perform duties that a magistrate has the authority to perform. _____
37. Municipal judges, acting as magistrates, may issue emergency protection orders for an offense involving family violence. _____
38. Only justices of the peace may conduct peace bond hearings. _____
39. Municipal judges, acting as magistrates, may accept a complaint (probable cause affidavit) for a felony. _____
40. Municipal court clerks may give magistrate warnings after a defendant is arrested when the municipal judge is not available. _____
41. Municipal judges, acting as magistrates, may issue search warrants. _____

42. Only justices of the peace may conduct license suspension hearings. ____
43. Usually, clerks are responsible for establishing and maintaining a financial management program for the court. ____
44. Although presiding judges have authority to administer the oath to someone swearing to a complaint, associate judges do not. ____
45. A municipal judge may dismiss a case filed by a citation if the peace officer asks for the dismissal. ____
46. When defendants present proof that they renewed an expired driver's license, the clerk may dismiss the case. ____
47. Clerks may dismiss an offense for failure to maintain financial responsibility if the judge is on vacation. ____
48. What power does a judge use to exercise control in the courtroom? _____

49. What Code gives municipal judges the authority to conduct marriage ceremonies? _____

PART 3 AUTHORITY OF A COURT CLERK

A. Duties

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

1. General Duties

Because statutes do not contain many specific duties for municipal court clerks, it helps to look at the general duties of the county court clerk. The following chart is a non-exhaustive list of general duties of county court clerks and corresponding duties in municipal courts.

County Clerk Duties	Corresponding Municipal Clerk Duties
Deposit fines and fees in the county treasury.	Deposit fines and fees in the city treasury.
Make a statement of fines and fees collected on the last day of each term of court.	Make reports to the city council of fines and fees.
Show from whom fees are received.	Keep records of money collected.
List jurors' names and length of service.	Keep records of names and length of service of citizens who serve on municipal court juries.
Transfer cases.	A transfer of a case is generally not applicable to municipal courts except when transferring a juvenile case to the juvenile court, or when a

	change of venue for a person allowed to participate in a teen court program has been granted.
Destroy archived, inactive records.	Destroy municipal court records retained for the period required by the State. (Check with the city secretary for a copy of the city’s ordinance approved by the State Library and Archives Commission governing the retention and destruction of records. Without it, the clerk must get permission from the State Library to destroy records.)
Maintain fee books.	Keep a record of all fines, fees, court costs, and restitution collected by the court and prepare a bill of costs showing the defendant what fees and costs are payable.
Report monthly court statistics to the Office of Court Administration.	Report monthly court statistics to the Office of Court Administration.

2. Required Duties

The following is a non-exhaustive list of duties that court clerks are required to perform.

Required Clerk Duties	Cite
The judge or clerk shall keep a docket containing certain case information: the style and file number of each criminal case; offense charged; the defendant’s plea and the date it was entered; the date the warrant, if any, was issued and returned; the date the trial, if any, was held and whether it was a bench or jury trial; the jury’s verdict, if applicable, and the date; the judgment and sentence of the court and the date given; the motion for new trial, if any, and the court’s decision; and whether an appeal was taken and the date of that action.	Article 45.017/45A.053, C.C.P.
The clerk of a court that does not provide online internet access to its criminal case records shall post in a designated public place in the courthouse notice of a prospective criminal court docket setting as soon as the clerk is notified of the setting.	Article 17.085, C.C.P.
Every clerk of a court of record shall keep a record of each case in which a person is charged with a violation of law regulating the operation of vehicles on highways. Magistrates and judges of non-record courts are required to keep these, but it is usually delegated to the clerk.	Section 543.201, T.C.
The clerk of every court in which there is a conviction or forfeiture of bail in a case involving a traffic offense must report it to the Department of Public Safety within seven days of the conviction or forfeiture. Judges and magistrates are also required to report.	Section 543.203, T.C.
When a jury shuffle is requested, the clerk randomly selects jurors by	Sections 62.107(c) and

computer or another unbiased process and prints the names in the order selected on a new jury list. The clerk then delivers a copy of the list to the prosecutor and the defendant or his or her attorney.	62.108(a), G.C.; Article 35.11, C.C.P.
When a person files with the court a permanent exemption from jury duty, the clerk is required to promptly deliver a copy of the permanent exemption to the county voter registrar.	Sections 62.107(c) and 62.108(a), (c), and (d), G.C.
When a defendant appeals, the clerk is required to forward the record to the appellate court.	<i>Whitsitt v. Ramsay</i> , 719 S.W.2d 333 (Tex. Crim. App. 1986)
When a forfeiture has been declared upon a bond, the judge or clerk shall docket the case upon the scire facias (a special docket for bond forfeitures) or upon the civil docket.	Article 22.10, C.C.P.
If a victim of family violence is not present when a magistrate's order of emergency protection is issued, the clerk must send him or her a copy.	Article 17.292(g), C.C.P.
If a magistrate suspends a concealed handgun license when issuing a magistrate's order of emergency protection, the judge or the clerk is required to immediately notify the Department of Public Safety.	Article 17.293, C.C.P.
A magistrate's clerk is the custodian of any arrest warrants or affidavits made in support of the warrant. The warrants and affidavits are public information and the clerk has an affirmative duty to make a copy of the warrants and supporting affidavits available for public inspection after the warrants are executed.	Article 15.26, C.C.P.
The clerk is required to make a copy of the affidavit for a search warrant after it has been executed and have it available for public inspection in the clerk's office during normal business hours.	Article 18.01(b), C.C.P.

3. Administrative Functions

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

- preparing process (complaints, warrants, capiases, summons, subpoenas, etc.) and coordinating with law enforcement;
- preparing correspondence and notices;
- processing fine payments and bonds (appearance and appeal bonds);
- maintaining accounting records of the court;
- managing the office and personnel;
- coordinating trials and appearances (includes juvenile cases);
- maintaining records;
- producing reports;
 - monthly reports to the Texas Judicial Council/Office of Court Administration;
 - notice of final convictions and bond forfeitures (reported to DPS);
 - notice of the completion date of driving safety course (reported to DPS);

- teen court dismissals (reported to DPS);
- quarterly court costs reports (reported to State Comptroller’s Office);
- notice of violation of *Nonresident Violator Compact* (reported to DPS);
- reports to city council, city manager, and judge;
- coordinating alternative sentencing (driving safety courses, deferred disposition, teen court);
- coordinating community service;
- coordinating juvenile cases and rehabilitative sanctions;
- processing dismissals;
- coordinating administrative and other hearings;
- processing bond forfeitures;
- overseeing the budget;
- accepting complaints and entering on the docket; and
- performing any other ministerial function that may be delegated by the judge.

B. Authorities

1. Summoning the Jury

When a defendant does not waive a trial by jury, the judge must issue a writ commanding the proper officer to summon a venire (a list of prospective jurors) from which six qualified persons shall be selected to serve as jurors in the case. The judge may command the court clerk to summon jurors. Art. 45.027/45A.156, C.C.P.

2. Administering the Oath to Jurors

The judge may direct the court clerk to administer the oath to venire persons for voir dire, which is the questioning of jurors under oath to determine their qualifications for jury service. Art. 35.02, C.C.P. After six jurors are selected, the court may also direct the clerk to administer an oath to the jurors to properly try the case. Arts. 45.030/45A.159 and 35.22, C.C.P.

3. Administering the Oath to Complainant

Article 45.019/45A.101 of the Code of Criminal Procedure grants the power to administer the oath to a person swearing to a complaint before the municipal court. The following court officials have the authority to administer this type of oath:

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

Section 602.002 of the Government Code provides authority for a judge, retired judge, or clerk of a municipal court to administer any oath. Section 29.007(f) of the Government Code also

provides authority for a clerk in a home-rule municipality who is an appointed or elected clerk to administer oaths. It makes sense that a clerk who has previously taken the oath of office upon election or appointment would have the authority to administer an oath under both the Government Code provisions and Article 45.019/45A.101.

4. Issuing Subpoenas

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

Article 24.01(d) of the Code of Criminal Procedure states that a judge or a clerk issuing a subpoena shall sign the subpoena and indicate on it the date it was issued, but the subpoena need not be under seal. Art. 45.012(g)/45A.052, C.C.P.

5. Authenticating Acts

Article 45.012(g)/45A.052) of the Code of Criminal Procedure requires non-record municipal courts to impress a seal on all documents, except subpoenas, issued out of the court and to use the seal to authenticate the acts of the judge and clerk. Section 30.000125 of the Government Code governs the use of the court seal for courts of record. These two statutes are similar in that they both require the seal to be impressed on all documents, except subpoenas, issued out of the court and to authenticate the acts of the judge and clerk. The two statutes are different in that Article 45.012/45A.052 does not provide for the wording of the seal, but Section 30.000125 does contain specific wording for the municipal courts of record seal. That statute requires the following phrase to be included on the seal: “Municipal Court of/in _____, Texas.” Non-record municipal courts may want to consider using the same or similar wording on their seal.

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

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

C. Custodian of the Funds

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

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

D. Fraudulent Documents

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

Section 51.904 of the Government Code requires the clerk to post a warning sign with letters at least one inch in height that is clearly visible to the general public near the clerk's office stating:

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

E. Standing Orders

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

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

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

Practice Note

Standing orders are generally a best practice but are not required or defined by any statute. They are, however, a means to clearly document the authority delegated to the court clerk. Judges have complete discretion over whether to utilize standing orders. Such orders should not unduly interfere with a defendant's ability to appear before the judge.

- 50. What is a general-law city? _____

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

- 52. What is a home-rule city? _____

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

True or False

- 54. City secretaries may never hold the office of court clerk. _____
- 55. In a general-law city, a court clerk automatically serves for a two-year term unless the city provides by ordinance for a longer term. _____
- 56. In a general-law city, the city manager may fill a vacancy for the unexpired term of a court clerk's office. _____
- 57. Every time someone is elected, appointed, or reappointed, he or she is required to swear to an anti-bribery statement and to take an oath of office. _____
- 58. An elected or appointed official may perform official duties before filing the anti-bribery statement with the official records of the office. _____
- 59. List the general duties of the municipal court clerk. _____

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

True or False

- 61. Both clerks and judges may establish and maintain a financial management program for the court. _____
- 62. Court clerks may prepare warrants but not sign them. _____
- 63. Only judges may grant driving safety courses, but clerks may give defendants the paperwork on court requirements for processing their cases. _____
- 64. What type of records is a municipal court clerk of a court of record required to keep _____

regarding traffic offenses? _____

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

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

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

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

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

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

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

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

73. What is a clerk required to do after warrants have been executed? _____

74. Who is custodian of the funds of the court in your city? _____

75. When a defendant does not waive a jury trial, when may the clerk summon prospective jurors? _____

76. When may the clerk administer the oath to prospective jurors for voir dire? _____

77. What information is required to be entered on the docket? _____

78. Why may judges delegate the maintenance of the docket to the clerks? _____

79. List what a clerk is required to do concerning fraudulent documents. _____

True or False

80. Court clerks, deputy court clerks, and city secretaries may administer an oath to someone swearing to a complaint. _____
81. Municipal court clerks may administer an oath pertaining to any matter in municipal court. _____
82. Judges may ask the clerk to administer the oath to the six persons chosen for a jury. _____
83. Why do municipal court clerks have authority to issue subpoenas? _____

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

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

86. What is the purpose of the municipal court seal? _____

PART 4 IMAGE OF THE COURT

A. Public Perception

Image is an important part of public perception. Court personnel have an important role in promoting public confidence in the integrity and impartiality of the judiciary. Everyone that comes through municipal courts should experience procedural fairness. Procedural fairness occurs when people experiencing the justice system perceive the procedures (and their treatment) as fair. Although the image of the municipal court is affected by many different factors, professionalism and impartiality of the court staff are perhaps the most important traits that command respect.

B. Court Decorum

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

The fact that the judge and court staff must remain neutral does not mean that they should be detached from the public. Many courts have adopted customer service best practices where all defendants, witnesses, attorneys, victims, and staff from cooperating departments are treated with respect and appropriate levels of service.

C. Court Operations

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

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

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

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

87. Explain, in your own words, court decorum. _____

CONCLUSION

After reading this guide, clerks should have a clearer picture of the judicial system and their role in it. Although the judge is responsible for guiding the court, it is the clerk who manages the day-to-day operations of the court, ensuring that the ministerial and administrative duties are properly performed. Clerks are literally the face of the court to most defendants and may encounter more defendants on a daily basis than judges and prosecutors. Many defendants do not understand that the judge may not hear their side of the story unless it is at trial or unless the defendant wants to plead guilty or *nolo contendere*. To help these defendants understand court procedures, clerks should be good communicators and understand court processes and procedures to be able to properly explain them to defendants.

Some Texas cities require the judge to also be the clerk for the court, which tasks judges with performing the ministerial and administrative work typical of clerks. Judges acting as the clerk must also be concerned with the potential appearance of impropriety when preparing complaints based off of a citation, coordinating peace officers' filing of citations and the officers' trial appearances, or providing the prosecutor information needed to prosecute cases.

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

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

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

Anti-Bribery Statement of Officer

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

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

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

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

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

Oath of Office

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

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

APPENDIX B: WHOSE JOB IS IT?

Activity	Magistrate	Judge	Clerk	Prosecutor	Other
Issue search warrants	x				
Issue arrest warrants	x	x			
Review probable cause for Class A & B misdemeanor & felony warrants	x				
Administer oath to affiant swearing to complaint – A & B misdemeanors & felonies					x District and County Attorney
Administer magistrate warnings	x				
Issue MOEPs	x				
Set bail	x	x			x Peace Officer (in limited circumstances)
Determine sufficiency of bail	x	x			
Issue citation					x Peace Officer
File sworn complaint (charging instrument)			x	x	x Any person
Approve charges and dictate language in charging instrument				x	
Prepare complaint (charging instrument)			x	x	
Administer oath to affiant swearing to complaint in municipal court		x	x	x	x City Secretary, City Attorney, and Deputy City Attorney
Request summons				x	
Prepare summons			x		
Issue summons	x	x			
Issue capias		x			
Maintain docket		x	x		
Formally accept plea from defendant	x	x			

Activity	Magistrate	Judge	Clerk	Prosecutor	Other
Enter not guilty plea when defendant fails to enter plea		X			
Plea bargaining				X	X Defendant
Accept plea bargain		X			
Set fines		X			
Determine how fine is paid		X			
Prepare judgment		X	X		
Sign judgment		X			
Process DSC request		X	X		
Grant DSC		X			
Grant deferred		X			
Process paperwork for deferred		X	X		
Set case for show cause hearing		X	X		
Grant continuances		X			
Rule on motions		X			
Request subpoenas				X	X Defendant
Issue subpoenas		X	X		
Serve subpoenas					X Peace Officer or a Non-party at least 18 years
Deliberate on evidence for determination of guilt		X			X Jurors
Issue writ of venire		X			
Summon prospective jurors		X	X		
Administer oath to venire and/or jury panel		X	X		X Bailiff
Grant extensions for payment		X			
Grant community service		X			
Grant credit for time served		X			

Activity	Magistrate	Judge	Clerk	Prosecutor	Other
Waive fines/costs		x			
Dismiss cases		x		x	
Prepare capias pro fine		x	x		
Issue capias pro fine		x			
Execute warrant, capias, summons, capias pro fine					x Peace Officer
Prepare file for appellate court		x	x		

ANSWERS TO QUESTIONS

PART 1

1. False.
2. False.
3. False.
4. True.
5. False.
6. The Texas Constitution authorizes cities to provide for a term not to exceed four years for the municipal judge. A city may provide for this term through its city charter or by majority vote, depending on whether it is a home-rule or general-law city. For municipal courts of record, however, the term of office for judges is established by the ordinance that created the office, for a definite term of two or four years.
7. No, a non-attorney may not represent another person in court proceedings regardless of any relationship or power of attorney document. A power of attorney, despite its name, does not permit a person to act as a licensed attorney representing others in court. A person must be an attorney at law, licensed to practice in Texas.
8. Minimum qualifications to become an attorney in Texas are a law degree (Doctor of Jurisprudence or J.D.) and a valid Texas Law License.
9. Every time appointment, election, reappointment, or reelection occurs; with each new term of office.

PART 2

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

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

PART 3

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

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

- the nature of the offense charged;
 - the plea offered by the defendant and the date the plea was entered;
 - the date the warrant, if any, was issued and the return made thereon;
 - the date the examination of trial was held, and if a trial was held, whether it was by jury or by the justice or judge;
 - the verdict of the jury, if any, and the date of the verdict;
 - the judgment and sentence of the court, and the date each was given;
 - the motion for new trial, if any, and the decision thereon; and
 - whether an appeal was taken and the date of that action.
78. Because judges are required to keep a docket and there is no discretion as to the information required to be maintained, judges may delegate this ministerial duty to the clerk.
79. A municipal court clerk is required to notify in writing the aggrieved person against whom the purported judgment, act, order, directive, or oral process is rendered. If the document or instrument purports to create a lien on real or personal property, the clerk is required to notify in writing the person named in the document at his or her stated or last known address. The clerk is required to provide this written notice not later than the second business day after the date that the document or instrument is offered or submitted for filing. The clerk is also required to post a warning sign with letters at least one inch in height that is clearly visible to the general public near the clerk’s office stating: IT IS A CRIME TO INTENTIONALLY OR KNOWINGLY FILE A FRAUDULENT COURT DOCUMENT OR INSTRUMENT.
80. True. This authority is found in Art. 45.019/45A.101, C.C.P.
81. True.
82. True.
83. Municipal court clerks have the authority to issue subpoenas because there is no discretion in issuing a subpoena; it is a ministerial duty.
84. The statute requiring the seal does not provide the wording of the seal.
85. “Municipal Court of/in _____, Texas.”
86. The purpose of the court seal is to authenticate the acts of the judge and clerk.

PART 4

87. Decorum includes observing correct judicial procedures and customs, as well as exercising courtesy before everyone who appears in court. Starting on time, allowing time to permit full hearings, and being courteous to all who appear in court are examples. (*Answers may vary*)