

Municipal Court: The Basics

Miles Risley, City Attorney
City of Wichita Falls

Kinley Hegglund, Sr. Ass't City Atty

Subject Matter Criminal Jurisdiction of Municipal Courts

- Exclusive subject matter jurisdiction over City ordinance violations in the City limits.
- Concurrent subject matter jurisdiction (with JP courts) over state Class C offenses punishable by fines of up to \$500, but jurisdiction also exists for fines of up to \$2,000 for Class C violations relating to fire safety, zoning, public health, and sanitation.

Civil Jurisdiction

- Dangerous dog cases under Tex. Health & Safety Code § 822.001, et. seq.
- Parking related civil offenses (if civil administrative adjudication system has been approved by ordinance). Tex. Transp. Code § 682.001, et. seq.
- Building demolition & securing, if the municipality chooses to have its hearings before a “civil municipal court”. Texas Local Gov’t Code § 214.001(p).

Geographic Limitations on Jurisdiction:

- generally limited to the City limits, but home rule Municipal Courts have additional jurisdiction over defined nuisances occurring within 5,000 feet of the City limits & property owned by City in ETJ.
- Municipal Courts of Record have additional geographic jurisdiction over:
 - dairies, slaughterhouses, or slaughter pens which produce meat or milk for consumption in the City limits
 - nuisances within 5,000 feet of the City limits
 - groundwater protection outside the City-limits of a 750,000+ City (Tex. Local Gov't Code § 401.002)

Municipal Court Judges

- serve a two-year term unless a longer term (up to 4 years) is established by ordinance or charter.
- In non-record courts, judges need not be attorneys unless required by City charter
- Judges in municipal courts of record must be attorneys unless exempted by their court-of-record statute. Tex. Gov't Code § 30.0006.

Complaints

- Citation may be filing instrument for purposes of pleading guilty/no contest



- Complaint must be sworn if defendant fails to appear or pleads not guilty
- Complaint must be made within 2 years of the offense

Complaints must:

- show that the accused committed an offense against the laws of this state and must assert that the affiant has good reason to believe and does believe that the accused committed an offense against the law of this state.
- notify the defendant of the alleged offense
- begin with the words, “In the name and by the authority of the State of Texas” and end with the words, “Against the peace and dignity of the State.”

Complaints must (cont'd):

- allege all the elements of the offense.
 - Any exceptions to the offense must be alleged and negated/
 - Defenses do NOT need to be negated in the complaint.
- plead with sufficient particularity to allow the defendant to plead the judgment as a bar to a second prosecution for the same offense.

Complaints must (cont'd):

- allege location:
 - All complaints must allege that the violation occurred within the territorial limits of the city
 - Complaints must more specifically allege the location of the crime if its location is an element (ex. public street for a traffic violation).

Complaints must (cont'd):

- allege a culpable mental state, if offense is not a strict liability offense, including:
 - intentional;
 - knowing;
 - reckless; and
 - with criminal negligence.
- Many Transportation Code offenses do not require mental states. AG Op. JC-0451 (2002)
- City Code may dispense with mental state for offenses with maximum fines of less than \$500

Complaints must (cont'd):

- be signed. – rubber stamp or electronic signature is OK. Art. 45.021 TCCP
- be sworn. Article 45.019 TCCP
- be sealed. Article 45.012 TCCP

Complaints must (cont'd):

- allege the manner and means of committing the offense.
 - Manner = method of doing something
 - ex. striking
 - Means = how end is achieved
 - ex. with hands

Complaints must (cont'd):

- name the victim of the crime, if the crime has a victim.
- state the date that the offense was committed as definitely as possible. Art 45.019(a)(5) TCCP
 - The date of the offense in the complaint must be within two years of the date of the complaint.

Complaints must (cont'd):

- in property crimes, such as criminal mischief, trespass, or theft,:
 - indicate who owns the property.
 - identify personal property, if known, by the name, kind, number, and ownership of the property.
 - plead the value of the property with enough sufficiency to show that the amount falls within the jurisdiction of the court.

Objections to Complaints (Motions to Quash)

- If a defendant does not object to a defect, error, or irregularity in a charging instrument before the date of the trial on the merits of the case, the defendant waives the right to object to it.
- The court may require an objection to the charging instrument be made at an earlier time.
- If the court has set a pre-trial hearing pursuant to Article 28.01, TCCP, the motion to set aside must be filed at least 7 days before the date of the hearing or it is waived, unless the court determines good exists to grant the motion

Objection to Complaint in Trial de Novo

- A county court conducting a trial de novo on an appeal from a non-record municipal court may dismiss the case because of a defect in the complaint only if the defendant objected to the defect before the trial began in the municipal court.

Dismissing Cases

- In Texas, prosecutors cannot dismiss without written statement of reasons and the court's approval. Article 32.02, TCCP
- Courts may not dismiss without the prosecutor's consent, in the absence of specific statutory authority.

Punishment

- Class C violations generally have a maximum punishment of \$500 per offense.
- Violations of laws involving zoning, fire safety, health or sanitation may have fines of up to \$2000 per offense.
- Most traffic-related offenses are punishable by a maximum fine of \$200 per offense

Deferred Disposition---Defendants may be placed on deferred disposition for up to 180 days

- Judge executes an Order of Deferred Disposition establishing deferral period & conditions

Possible Conditions of Deferred Disposition

- Pay special expense (not to exceed max fine)
- Post bond to secure pmt of fine or special expense
- Pay restitution to victim – up to amt of fine
- Submit to counseling;
- Submit to testing for alcohol or drugs;
- Submit to psychosocial assessment;
- Participate in alcohol/drug treatment/education;
- Pay costs of testing, treatment, or education;
- Complete drivers safety course or other course;
- Present evidence of compliance to court;
- Comply with any other reasonable condition

Ineligible for Deferred:

- Moving violation in construction zone. Art. 45.051(f), TCCP
- Violation of law or ordinance related to control of a motor vehicle by a holder of a CDL. Art. 45.051(f) TCCP
- Under 25 years of age for a moving violation UNLESS defendant takes DDC. Art. 45.051(f) TCCP
- Traffic offense by holder of a provisional license UNLESS judge requires defendant to be examined by DPS under Tex. Transp. Code 521.161(b)(2) and pay DPS a \$10 fee.
- Under 21 & charged with specified alcoholic beverage violations UNLESS judge requires alcohol awareness course & community service

Community Service

- A judge may require a defendant to discharge all or part of the fine or costs by performing community service. Art. 45.049, TCCP
- Many municipal courts do not have community service programs for adults.
- A defendant discharges at least \$50 of fines + costs for each 8 hours of service
- An adult defendant may, at any time, discharge an obligation to perform community service by paying the fines and costs assessed.

Anti-Speedtrap Law:

- Municipalities under 5,000 population may retain fines for violations of highway laws only up to 30% of the municipality's revenue from all sources other than federal funds and bond proceeds for the preceding year. After reaching 30% max, the sub-5,000 city must send the State Treasurer the part of any fine exceeding \$1.00. Tex Transp Code §542.402
- City of Kendleton—municipal bankruptcy

Quotas are prohibited for Peace Officers & Judges:

- Tex Transp Code § 720.002 prohibits cities from establishing or maintaining a plan to evaluate, promote, compensate, or discipline peace officers or judges according to a predetermined or specified number of any type or combination of types of traffic citations

Children in Municipal Courts:

- Municipal courts have jurisdiction over children over the age of 9 who are charged with most fine-only criminal offenses. Tex Penal Code § 8.07
- Children under age 17 may **not** be ordered to jail by a municipal court. Article 45.058, TCCP
- If accused is under age 17, court must summon the parent, managing conservator, or custodian and have him or her present during all proceedings relating to the case filed against his or her child, but Court may waive reqt of presence after finding it is unable to secure presence of parent/guardian.

Juvenile Failure to Appear:

■ **Procedures before 17th Birthday:**

- provide notice to the juvenile and the juvenile's parents of their continuing obligation to provide the court notice of change of address within 7 days of moving;
- summon the parents of the juvenile to appear in open court with their child;
- order DPS to suspend or deny issuance of the juvenile's driver's license; and
- order juvenile to be taken into nonsecure custody under Article 45.058, Texas Code of Criminal Procedure.

Juvenile Failure to Appear:

- After non-appearing child turns 17, the court may issue juvenile who is now an adult a notice of continuing obligation to appear with specified statutory wording. Article 45.060, TCCP
- If the now-17+ year old defendant fails to appear after being served this notice, the prosecutor may file a charge of violation of continuing obligation to appear.
 - Court may issue arrest warrant for this charge.
 - When arrested, court may handle all unadjudicated charges.

Juvenile Failure to Pay Fine:

art. 45.045

- A writ of capias pro fine may not be issued for individual convicted of offense committed before age 17 unless:
 - the individual is 17 years of age or older;
 - the court proceeded against the individual under Article 45.050, C.C.P; and
 - the court finds that the issuance of the writ of capias pro fine is justified after considering:
 - defendant's sophistication and maturity;
 - defendant's criminal record & history; and
 - the reasonable likelihood of bringing about the discharge of the judgment through the use of procedures and services currently available to the court.

Juvenile Failure to Comply with Court Order:

- A municipal court may **not** order a child confined for contempt of an order of the court.
- If a child fails to obey an order of the court, the court must give the child notice of a hearing.
- If the court retains jurisdiction, it may hold the child in contempt and impose a fine not to exceed \$500 and/or order the DPS to suspend or deny issuance of the child's driver's license until child fully complies with the orders of the court.

Optional Rehabilitative Sanctions

45.057

- When child is convicted of a fine-only offense, the court may order additional rehabilitative sanctions including:
 - referring the child/parents/guardian for early youth intervention services;
 - requiring child to attend a program that court determines to be in the best interest of the child; or
 - requiring child's parent or guardian, if the court finds they contributed to, caused, or encouraged the child's conduct, to do any act or refrain from doing any act that the court determines will increase likelihood that child will comply with the court orders that is reasonable and necessary for the welfare of the child, including:
 - attend a parenting class; and
 - attend the child's school classes or function.
 - requiring payment of up to \$100 for program costs

Teen Court:

- Teen court is a type of alternative sentencing in which the defendant is sent to a program where he or she is sentenced by other juveniles. Art. 45.052, TCCP
- Defendant must complete teen court program not later than 90th day after date of teen court hearing
- Judge must dismiss charge at conclusion of the teen court deferral period if defendant has successfully completed the teen court program.
- Optional \$10 fee

To be eligible for teen court, the defendant must:

- enter a plea of guilty or no contest in open court and request, teen court program;
- be under age of 18 or be in high school;
- be charged with a fine-only misdemeanor; and
- not have successfully completed a teen court program in the past 2 years.

Unpaid fines may be collected through:

- capias pro fine
- execution of judgment
- contract with DPS for denial of drivers license for traffic offense violations
- contract with County Tax Assessor or TxDOT for denial of vehicle registration for traffic offense violations
- contract for collection of judgment with private vendor

Prosecutor Ethics

- It is the primary duty of the municipal prosecutor not to convict, but to see that justice is done. CCP sec. 45.201

Rules of Professional Conduct: R. 3.09

Special Responsibilities of a Prosecutor

- The prosecutor in a criminal case shall:
- Refrain from prosecuting or threatening to prosecute a charge that the prosecutor knows is not supported by probable cause
- Refrain from conducting or assisting in a custodial interrogation of an accused unless the prosecutor has made reasonable efforts to be assured that the accused has been advised of any right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel.

The Prosecutor in a criminal case shall:

- Not initiate or encourage efforts to obtain from an unrepresented accused a waiver of important pre-trial, trial, or post-trial rights.
- Make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal

The prosecutor in a criminal case shall:

- Exercise reasonable care to prevent persons employed or controlled by the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 3.07.

Routine ethical issues likely to be encountered by Prosecutors

- Suppression of exculpatory evidence. Rule 3.09(d). *Brady v. Maryland*, 373 U.S. 73 (1963). Exculpatory and mitigating evidence must be disclosed. The evidence need not establish innocence to be exculpatory.
- Ex Parte communication with the trial court. Rule 3.05(b) and canons 3(A)(5) and 8(K).

Routine ethical issues likely to be encountered by Prosecutors

- Improper statements to the press. Rule 3.07. This includes criticism of judges. Rule 8.02.
- Prosecutors have prosecutorial immunity for statements made in the courtroom, but only qualified immunity for other public statements within the scope of their duties.
- There is no immunity for statements not made within the scope of duties or for incorrect out-of-court statements motivated by bad faith or malice.

Routine ethical issues likely to be encountered by Prosecutors

- Prosecution of, or threats to prosecute a case unsupported by probable cause. Rule 3.09(a)
- Knowing use of false evidence. Rule 3.03(5)
- Communications with a party represented by counsel concerning the subject of that representation. Rule 4.02(a).
- Making false statements of material fact. Rules 3.03 and 4.01(a)

Routine ethical issues likely to be encountered by Prosecutors

- Making Threats of criminal prosecution or grievance proceeding, intended to discourage a person's service as a witness. Rule 4.04
- Comments made to harass, or embarrass, or influence the future jury service of a juror who has made the wrong decision. Rule 3.06(d)
- Eagerness to win, or anger over not winning, thereby clouding judgment to ensure that justice is done, and done properly.

Municipal Court Trials

- The right to a jury trial is one of the fundamental guarantees of the United States Constitution. All people, regardless of race, religion, sex, national origin, or economic status, have the right to trial by a fair and impartial jury. Jury trials are held before a 6 person petit jury
- Should the defendant wish, he may have his case tried before the bench. Bench trials are held before a judge without a jury.

Voir Dire

- In Voir Dire in municipal courts, each party gets three preemptory strikes. When the court in its discretion so directs, the State and Defendant shall conduct the voir dire examination of prospective jurors in the presence of the entire panel.

Purposes of Voir Dire

- To enable the parties to intelligently exercise preemptory challenges
- To convene competent, fair, impartial, and unprejudiced jury to judge the facts of the case.
- To expose bias or interest of prospective jurors which might prevent full consideration of evidence presented at trial and to test qualifications of jurors

Regulation of Voir Dire

- Voir Dire examination rests within the sound discretion of the trial court, and only abuse of discretion will call for reversal on appeal; the trial court may, therefore, impose reasonable restrictions on the exercise of voir dire examination. *Brumley v. State*, 804 S.W.2d 659 (App. 7 Dist. 1991).

Regulation of Voir Dire

- The trial court, in its discretion may place reasonable time limits on the length of voir dire examination, and within such limits defendant may examine each prospective juror individually and pose questions upon any proper area of inquiry; the right to impose such questions is part of the right to counsel under the U.S. Constitution article 1, section 10, in order that peremptory challenges may be exercised intelligently. *Florio v. State*, 568 S.W.2d 132 (Cr. App. 1978).

Opening Statements

- The opening statement is a contest for the imagination of the jury. It is the single best method to explain your case to the jurors. Your goal is to find the narrative and tell the story (that you can support with competent testimony and admissible evidence). Enthusiastically acquaint the jurors with the plot, the place, and the people involved in the case. It is a good opportunity to attribute favorable human qualities to your client, face and neutralize frailties in your case, and establish a harmonious presence with the jurors. The ideal opening statement paves the road to the verdict you seek.

Tips For Opening Statements

- Look and sound good from the beginning.
Put your best foot forward.
- Be enthusiastic about your message and story.
- Make sure your verbal and visual story paints mental pictures for the jurors.
- Begin your opening statement with a strong attention-getting "hook" that grabs the jurors' attention

Tips For Opening Statements

- Remember the principle of *primacy* that states that, all other things being equal, jurors are more attentive and receptive to information at the beginning of the opening statement.
- Be *succinct* and *substantive* in your opening.

Tips For Opening Statements

- Prosecutors are at a storytelling disadvantage in opening that will often leave them open to objection. The rules require the prosecution to open first. In opening statement, due to the burden of proof and the presumption of innocence, prosecutors are typically not allowed to anticipate defense testimony. You cannot talk about any evidence that may be presented by the defense.
- Don't overstate your case. Don't make promises in opening that you will not be able to keep.

Tips For Opening Statements

- Be careful in opening statement not to expand the admissibility of otherwise excludable evidence. Don't open the door!
- Never read the opening statement to the jury. It's more persuasive to work without notes.

Case in Chief- Direct Examination

- It's been said that a good lawyer turns evidence into fact and fact into truth. Because they bear the burden of proving the case beyond a reasonable doubt, prosecutors must call witnesses in every trial. Direct examination is the keystone of the prosecution's case. Your job is to use the direct persuasively and in a manner that establishes the foundation for your jury argument.

Direct Examination presents evidence in a form that is:

- legally sufficient to meet the burden of proof,
- understood and remembered,
- convincing,
- able to withstand cross-examination, and
- anticipatory and contradictory of evidence that the opposition will present.

Legal Requirements-Direct Examination: Competency of your witness

- Witness must be *competent* to testify. To qualify as competent, a witness must have:
 - Understanding of the nature and obligation of the oath or affirmation to tell the truth,
 - Perception (knowledge) of the relevant event,
 - Recollection (memory) of the relevant event, and
 - Ability to communicate with the fact-finders (the jury or judge in a bench trial) in the common language of the court. (English).

Legal Requirements-Direct Examination: Relevance of your witness' testimony

- Witness' testimony must be relevant.
- Relevant evidence has some tendency, however small, to make the existence of a fact of consequence to the case more or less probable than it would be without it.
- Even when the witness' direct examination testimony is relevant, the probative value of the witness' evidence must not be substantially outweighed by its unfairly prejudicial influence or by considerations of undue delay or needless presentation of cumulative evidence.

Legal Requirements-Direct Examination: Authenticity of Evidence

- Matters of evidence must be authenticated.
- You authenticate an item of evidence by making a *prima facie* showing that it is genuine.

Cross Examination

- Cross Examination affords a prosecutor the opportunity to tell the rest of the story (in a supportive cross), and to cast doubt on the witness' credibility (in a discrediting cross). With your cross you want to tell certain aspects of your side of the story and have the witness agree with you or concede the accuracy of your points. You do this without getting into an argument with the witness you are crossing.

Closing Statement

- Prosecutors get the first and final word. Tell the jury what the evidence means.
- Open your argument with an attention-getting sentence or two. Say something that fixes the jurors' full attention on what you have to say next.
- After you have gained their attention, tell your jurors what is yet to come. Give them a brief verbal outline (forecast or preview) of where you are going with your argument.

Closing Statement

- Prosecutors should listen closely to the defense argument. Prosecutors have the opportunity to reply to the defense argument in the prosecution's closing (rebuttal) argument. To reply effectively to what has been said, you must know what has been said.
- Recognize that you won't be able to change the juror's basic life view or way of thinking. Try to present your argument in a way that caters to the jurors' world view, not yours.
- Try to answer the questions that you think the jurors would ask if they were allowed to do so.

Closing Statement

- Don't ask your jurors to assume too much. Explain why any assumption you make is logical.
- Don't ask your jurors to presume the existence of facts that don't flow logically, either by deductive or inductive reasoning, from other facts proven by evidence.
- Give the jurors reasons to trust the accuracy and credibility of the sources of your evidence.

Closing Statement

- Identify the major problems with your opponent's argument. Challenge its weaknesses point by point.
- Discuss your main points in plain English; talk about the evidence and explain what it means in light of the allegations and defenses; respond to opposition's theory of the case.
- As you complete the body of your argument, summarize your points. Connect the dots.
- End your argument on a strong note. You may want to tie your case together with a closure that restates the theme that you used in your opening statement.

Closing Statement

- What you say at the beginning and conclusion of your argument will resonate more loudly and stick longer than what you say in the body of the argument.
- The only parts of the argument that you memorize are the beginning and ending. All the rest is extemporaneous (well planned and prepared, but without the exact wording being determined in advance).
- Victory comes when your jury argument helps you persuade, convince and influence the jury to think something you want them to think and do something you want them to do.

Things a prosecutor can say that may result in a mistrial

- A prosecutor should avoid making unfair or improper remarks about the defendant, defense counsel, or a defense witness.

U.S. v. Crutchfield, 26 F.3d 1098, 1101-02 (11th Cir. 1994) (prosecutor's irrelevant questions insinuating that defense witness involved in major drug operations and other misconduct reversible error

Things a prosecutor can say that may result in a mistrial

- Prosecutor may not express personal opinions about the defendant's guilt or credibility or about matters requiring expert knowledge.
- Prosecutor may not comment on the defendant's failure to testify at trial.

Things a prosecutor can say that may result in a mistrial

- Prosecutor may not refer to previous convictions, current guilty pleas, or other bad acts of the defendant, codefendants, or co-conspirators.

U.S. v. Mitchell, 1 F.3d 235, 240 (4th Cir. 1993) (prosecutor's argument that defendant's brother's testimony should be disbelieved by jury because defendant's brother's own jury had disbelieved him reversible error.

Things a prosecutor can say that may result in a mistrial

- Prosecutor also may not appeal to jurors to act as a conscience for the community or make other remarks likely to inflame the passions of the jurors, if intended to lead them to convict for an improper reason.

U.S. v. Cannon, 88 F.3d 1495, 1502-03 (8th Cir. 1996) (prosecutor's improper reference to African-American defendants as "bad people" and calling attention to fact that defendants not locals reversible error.

U.S. v. Payne, 2 F.3d 706, 711-15 (6th Cir. 1993) (per curiam) (prosecutor's repeated references to Christmastime, poor, pregnant women, and major employee layoffs reversible error where "part of a calculated effort to evoke strong sympathetic emotions" for victims and against defendants

Things a prosecutor can say that may result in a mistrial

- Prosecutor may not vouch for the credibility of government witnesses or allude to her own oath of office to bolster the government's case.
- The prosecutor may not suggest that the defendant's retention of counsel indicates guilt.

Things a prosecutor can say that may result in a mistrial

- Prosecutors may not make material misstatements of law or fact.

U.S. v. Murrah, 888 F.2d 24, 27-28 (5th Cir. 1989) (prosecutor's repeated references to evidence not in record in both opening and closing argument and attacks on integrity of defense counsel reversible error.

Things a prosecutor can say that may result in a mistrial

- The prosecutor should confine her opening statement to evidence she intends to offer that she believes will be admissible, and limit her closing argument to evidence on the record and permissible inferences therefrom. Repeated misstatements that go uncorrected may be grounds for ordering a new trial or reversal on appeal.

U.S. v. Teffera, 985 F.2d 1082, 1089 n.6 (D.C. Cir. 1993) (dictum) (prosecutor's improper references during closing argument to alleged eye contact between co-defendants at time of arrest reversible error where comments not supported by evidence, "phantom evidence" key part of government's closing remarks).

State v. Daugherty (1987), 41 Ohio App. 3d 91 -- Mistrial should have been declared where prosecutor improperly implied that defendant's employment records would contradict her testimony, then failed to produce those records. On later examination, records in fact corroborated defendant's testimony.