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**AN INTRODUCTION TO MUNICIPAL COURTS**  
**AND THE TEXAS JUDICIAL SYSTEM**

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**CHAPTER 1**  
**AN INTRODUCTION TO MUNICIPAL COURTS**  
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**Introduction**

More people (*e.g.*, defendants, witnesses, and jurors) come into personal contact with municipal courts than all other Texas courts combined. Because these experiences are frequently the only contact citizens have with the courts, public impression of the entire Texas judicial system is largely dependent upon their experience in municipal court. Municipal judges constitute 38 percent of the entire state judiciary. Accordingly, municipal judges occupy a unique and most important position in the Texas judicial system.

The qualification and selection process of judges varies amongst municipalities; therefore, municipal judges come from a diverse range of occupational and educational backgrounds.<sup>1</sup> In this diversity is strength. Yet, in spite of such diversity, the same characteristics tend to unite municipal judges: a fundamental respect for the rule of law, a love for community, and a dedication to public service.

During the last 20 years, municipal courts have experienced a virtual deluge of change. Increased subject matter jurisdiction, a higher volume of diverse cases, and a litany of new laws and legal issues have redefined the role of Texas municipal courts. Challenging the notion that municipal courts merely adjudicate traffic offenses, municipal courts in the 21<sup>st</sup> century serve a critical role in preserving public safety, protecting the quality of life in Texas communities, and deterring future criminal behavior.

Even seasoned trial lawyers who become judges learn that the transition to the bench is not necessarily easy. The perspective of a judge is different from any other participant in the judicial process, and the challenges are unique to the occupation. A perpetual hunger for knowledge and a fundamental love of learning distinguish an exceptional judge from his or her peers. Being a judge requires a conceptual framework for understanding the judicial system.

**I. The History and Significance of Local Trial Courts**

While popular culture fixates on felonious criminal behavior and the events transpiring in district courts, criminologists have long recognized that the key to restoring order and reducing crime begins at the community level. In their groundbreaking book *Fixing Broken Windows*, Kelling and Coles illustrate that in order to prevent “more serious,” less common crimes, the criminal justice system must locally address the more frequent, “less serious” crimes that collectively create a community environment conducive to all types of disorder and lawlessness.<sup>2</sup>

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<sup>1</sup> Sixty-two percent of municipal judges have attended college. Fifty-six percent are law school graduates. *Annual Statistical Report of the Texas Judicial System*, Fiscal Year 2009, Office of Court Administration, Austin, Texas at 13 (Henceforth, cited as OCA).

<sup>2</sup> George L. Kelling & Catherine M. Coles, *Fixing Broken Windows*, New York, N.Y.: Simon & Shuster (1996).

Texas municipal courts stem from a long tradition of local courts that have embraced the notion that the preservation of community life and the prevention of greater lawlessness begins at home in our towns and cities.

While the first local trial courts date back to the Old Testament (Exodus 18:13-26), local trial courts in America originate back to the justice of the peace and magistrate courts of 14<sup>th</sup> century England. During the 19<sup>th</sup> century, a majority of the United States continued the tradition of local courts through either the election or appointment of justices of the peace, mayors, police magistrates, recorders, and other judicial officers.

During the 20<sup>th</sup> century, local trial courts of limited jurisdiction experienced both considerable criticism and change. The impartiality of many local trial courts was called into question by the existence of the fee system (a system that paid the judicial officer directly from fees assessed against defendants found guilty). The demise of this notorious fee system began in *Tumey v. Ohio*<sup>3</sup> in which the U.S. Supreme Court held that a judge in a misdemeanor case is disqualified from adjudicating the case if the judge's fee depends on the conviction of the defendant.

Within 50 years, the Supreme Court once again addressed another controversial issue pertaining to lower court judges: Should lower court judges be attorneys? In *North v. Russell*,<sup>4</sup> the court held that non-lawyer judges do not deny defendants equal protection, nor do they violate the Due Process Clause of the 14<sup>th</sup> Amendment. In the 1980s, there were 11,000 judges in the United States who were non-attorneys (46 percent of all state judges).<sup>5</sup> A disproportionate number of part-time, non-lawyer judges are located in New York and in Texas.<sup>6</sup> While a majority of states require most judges to be licensed attorneys,<sup>7</sup> about 40 states allow non-attorney judges to hold limited jurisdiction judgeships.<sup>8</sup>

By the 1980s, criticisms of the quality of justice dispensed in the lower courts led many states to initiate various reforms, such as increased emphasis on judicial education.<sup>9</sup> In 2004, 26 states mandated that judges of limited jurisdiction have a requisite number of judicial education hours before taking the bench, and 43 states required continuing judicial education.<sup>10</sup> While such efforts to reform the local trial courts have resulted in beneficial changes in some jurisdictions, the problems facing local trial courts remain as varied as the courts themselves. In general, however, the most pressing problems of lower

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<sup>3</sup> 273 U.S. 510 (1927).

<sup>4</sup> 427 U.S. 328 (1976).

<sup>5</sup> David W. Neubauer, *America's Courts and the Criminal Justice System (4<sup>th</sup> Edition)*, Belmont, California: Brooks/Cole (1992) at 419.

<sup>6</sup> David W. Neubauer, *America's Courts and the Criminal Justice System (9<sup>th</sup> Edition)*, Belmont, California: West/Wadsworth (2008) at 409.

<sup>7</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *State Court Organization* (2004) at 40-43.

<sup>8</sup> Bureau of Labor Statistics, *U.S. Dep't of Labor, Judges, Magistrates, and Other Judicial Workers* (2004) at 8.

<sup>9</sup> Julie Bronstein, *Survey of State Mandatory Judicial Education Requirements*, Washington D.C.: American University (1981).

<sup>10</sup> U.S. Department of Justice, *supra* Note 8 at 50.

courts continue to involve inadequate financing,<sup>11</sup> inadequate facilities, lax court procedures, and unbalanced caseloads.<sup>12</sup>

By the turn of the century, local trial courts of limited jurisdiction existed in all but six states, the District of Columbia, and Puerto Rico.<sup>13</sup> These courts constitute 60 percent of all courts in America. In 2005 alone, over 64 million cases, about two-thirds of all state court filings, were filed in local trial courts of limited jurisdiction.<sup>14</sup> While the volume and types of cases adjudicated in local trial courts have continued to increase, traffic cases declined by 14 percent from 1987 to 2001.<sup>15</sup> This decrease is attributed to the fact that some states have opted to decriminalize and transfer common traffic offenses from the criminal dockets of local courts to administrative proceedings in the executive branch of government.<sup>16</sup>

## **II. The Constitutional Origins of Municipal Courts in Texas**

The Texas courts named in the State Constitution of 1876 are collectively referred to as constitutional courts. Such courts include the high appellate courts (Texas Supreme Court and Texas Court of Criminal Appeals), the intermediate courts of appeals, the district courts, the constitutional county courts, and the justice courts.

Notably, the Constitution of 1876 was the first constitution since statehood not to expressly include municipal courts (or, as they were called at the time, “corporation courts”).<sup>17</sup> Though the Court of Criminal Appeals would ultimately refuse to acknowledge the omission as an express repeal of the authority of the Legislature to create municipal courts,<sup>18</sup> the omission sparked a controversy involving the constitutional legitimacy and authority of municipal courts.

At the heart of this controversy, lasting from 1876 to 1900, was a host of vexing legal questions. Could the Legislature still create such courts? Could municipal courts share criminal jurisdiction with the justice courts over state law violations? Did municipal courts have exclusive jurisdiction of certain subject matter? Were municipal courts truly “state trial courts?” Could city ordinance violations be prosecuted in the name of the State of Texas? If so, who represented the State (the city attorney, the county attorney)? During this period of time, both the Court of Criminal Appeals and the Supreme Court issued conflicting opinions.<sup>19</sup>

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<sup>11</sup> Despite a history in which many states have looked to local trial courts as sources of revenue through fines and court costs, few local courts receive funding from their state.

<sup>12</sup> Neubauer, *Supra* Note 6 at 405.

<sup>13</sup> *Id.* at 402.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 403.

<sup>16</sup> *Id.*

<sup>17</sup> David B. Brooks, *22 Municipal Law and Practice*, Section 15.04 (Texas Practice 2d ed. 1999).

<sup>18</sup> *Ex parte Hart*, 56 S.W. 341, 344 (1900).

<sup>19</sup> For contemporary insight into this period of confusion, see generally *Aguirre v. State*, 22 S.W.3d 463, 467 (Tex. Crim. App. 1999).

In an attempt to resolve the confusion in 1891, the Texas Constitution was amended to allow the Legislature to “establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof and may conform the jurisdiction of the district and other inferior courts thereto.”<sup>20</sup> In essence, the amendment modified the Constitution to allow the Legislature to statutorily create additional courts as it deemed necessary in an effort to ensure judicial efficiency. Thus, although such courts (known as statutory courts) were not expressly named, they would be implicitly authorized by the Constitution.<sup>21</sup>

While the constitutional amendment allowing such statutory courts seemed to provide a doctrinal source of legitimacy for municipal courts, the amendment did not explicitly answer a fundamental question: Did the Texas Constitution authorize such state statutory courts to be created at the municipal level of government?

In 1898, the Court of Criminal Appeals considered the amendment in light of an opinion issued by its sister court (the Supreme Court) and held that the Constitution did not authorize the Legislature to give jurisdiction of state law violations to municipal courts.<sup>22</sup> A year after the Court’s opinion, finding “great doubt and confusion concerning the jurisdiction of municipal courts,” the Legislature enacted a comprehensive statute to create municipal courts and to establish uniform procedure and jurisdiction.<sup>23</sup>

Ultimately, The Municipal Courts Act of 1899 proved to be a pivotal turning point in the development of municipal courts. One year later and contrary to an earlier opinion, the Court of Criminal Appeals in *Ex parte Wilbarger*<sup>24</sup> acknowledged that the Constitution permitted jurisdiction of state law offenses to be given to municipal courts. *Wilbarger* proved to be a seminal case. Subsequent to its opinion in *Wilbarger*, the Court of Criminal Appeals has consistently held that though they exist in the context of city government, municipal courts are state trial courts and “are governed by the same rules of practice as are other state courts.”<sup>25</sup>

### **III. The Texas Judicial System**

In simplest terms, the Texas judicial system is composed of three levels of trial courts and two levels of appellate courts. A trial court hears testimony and receives physical evidence and renders a verdict as

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<sup>20</sup> Article V, Section 1, Texas Constitution.

<sup>21</sup> Other statutory courts include county courts at-law and specialized district courts.

<sup>22</sup> *Coombs v. State*, 44 S.W. 854 (Tex. Crim. App. 1898).

<sup>23</sup> Section 19, Act of April 1, 1899, 26<sup>th</sup> Leg. Ch. 33, 1899 Tex. Gen. Laws 40, 44 (Hereafter, referred to as The Municipal Courts Act of 1899).

<sup>24</sup> 55 S.W. 968 (Tex. Crim. App. 1900). *Wilbarger* also upheld the constitutionality of municipal courts sharing concurrent jurisdiction with justice courts. Notably, the Court’s opinion in *Wilbarger* contradicted its earlier decision in *Leach v. State*, 36 S.W. 471 (Tex. Crim. App. 1896). *Leach* held that the role of municipal courts was strictly limited to adjudicating local ordinance violations. In as such, municipal courts were not state trial courts and municipal judges were not included as state officers. *Id.* 472-473. *Leach* was overruled in favor of *Wilbarger*. See *Ex parte Abrams*, 120 S.W. 883 (Tex. Crim. App. 1908).

<sup>25</sup> *Ex parte Quintanilla*, 207 S.W.2d 377 (Tex. Crim. App. 1947).

decided by either the judge or jury.<sup>26</sup> In the United States, state trial courts are generally divided into two categories: courts of general jurisdiction and courts of limited jurisdiction. A court of general jurisdiction has unlimited civil and criminal jurisdiction, though its judgments are subject to appellate review. A court of limited jurisdiction may hear only certain types of matters (civil, criminal, or both).

For the most part, an appellate court examines the merits of the proceedings in trial courts.<sup>27</sup> While there are limited exceptions, which will later be discussed in detail, appellate courts typically neither hear evidence nor determine guilt or innocence. The appeals heard in these courts are based upon the “record” (a written transcription of the testimony given, exhibits introduced, and the documents filed in the trial court) and the written and oral arguments of the appellate lawyers.

Unlike other states, Texas courts do not have uniform jurisdiction (*i.e.*, the authority to hear an unlimited range of cases). Rather, each court can only hear cases within the parameters provided to it by either the Texas Constitution or the Texas Legislature.<sup>28</sup> Such limited authority is known as subject matter jurisdiction. Ultimately, to be certain of either a trial or an appellate court’s jurisdiction, one must be familiar with either the constitutional provision or statute that created the particular court.

Since all Texas courts are limited by their own jurisdiction, there may be a natural tendency for judges to feel distant or isolated from the rest of the judicial system. It is nevertheless important to recognize that the entire Texas judicial system is interconnected. With this in mind, the following information examines the five levels of the judiciary with a particular emphasis on how each court functions in relation to municipal courts.

### **A. Local Trial Courts of Limited Jurisdiction**

There are two types of local trial courts of limited jurisdiction in Texas: justice courts and municipal courts. Respectively, the courts are presided over by justices of the peace and municipal judges.

The justice of the peace is the judicial figure generally associated with local justice in rural territories. Richard the Lionheart is said to have commissioned the first justices of the peace, known as *custodes pacis*, in 1195. They were knights responsible for preserving the peace in unruly areas. In American jurisprudence, justices of the peace have historically acted as judicial officers in rural and unincorporated portions of state territories. Such was the case in Texas, where “in the early days of the Republic, and during early statehood, the population of Texas was sparse and the power of government of necessity was decentralized.”<sup>29</sup> In 1928, all states included justices of the peace as an important component of their judicial system. By the middle of the 20<sup>th</sup> century, reformist pressures coupled with

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<sup>26</sup> Texas trial courts include municipal, justice, county, and district courts.

<sup>27</sup> While county courts hear appeals from municipal and justice courts, they are not considered state appellate courts. State appellate courts include 14 courts of appeals, the Supreme Court, and the Court of Criminal Appeals.

<sup>28</sup> Notably, while district courts in Texas are referred to as “state trial courts of general jurisdiction” they too are limited in the types of cases that they can adjudicate.

<sup>29</sup> See Interpretative Commentary, Article V, Section 19, *Vernon’s Annotated Texas Constitution*.

population shifts toward incorporated rural and urban areas brought an end to the era of the justice of the peace.<sup>30</sup> In 2004, justice of the peace courts existed in only 10 states: Arizona, Delaware, Louisiana, Mississippi, Montana, Nevada, New York, Oregon, Texas, and Utah.<sup>31</sup>

In suburban and metropolitan townships, police magistrate courts served as the urban counterpart of the justice of the peace courts. In Texas, such courts were known as corporation courts (denoting the creation of such courts within incorporated cities and towns).<sup>32</sup> Such courts were presided over by either the mayor or a designated police official (sometimes known as a police judge). In Texas, such officials were known as recorders.<sup>33</sup> A combination of law enforcement official and judicial officer, the recorder not only adjudicated common lesser criminal offenses, but also provided legal advice to the police, set bond on arrestees, and conducted preliminary hearings in felony cases. Over a period of time, the inherent conflicting duties of the police magistrate led to its abolition and the creation of two distinct positions: the police legal advisor and the municipal judge.<sup>34</sup> In 2004, municipal courts existed in 29 states.<sup>35</sup>

## 1. Municipal Courts

As the population of Texas has grown, so has the number of municipal courts and judges.<sup>36</sup> In terms of size, Texas municipal courts are as diverse as the state itself. Texas municipal courts vary from the large courts of record in Houston, Dallas, and San Antonio to the smallest town with a court, Domino (population 52).

### a. Jurisdiction

While the volume of cases adjudicated by municipal courts varies, they are unified in their criminal jurisdiction. Municipal courts have jurisdiction over “fine-only” criminal offenses. The term “fine-only” deserves emphasis and a word of warning. The typical notion of a fine-only offense is a Class C misdemeanor, punishable by a maximum fine of \$500.<sup>37</sup> Be aware, however, that the Penal Code provides that all state law violations defined outside of the Penal Code are to be prosecuted as a Class C

<sup>30</sup> Ellen H. Steury & Nancy Frank, *Criminal Court Process*, St. Paul, Minnesota: West Publishing (1996).

<sup>31</sup> U.S. Department of Justice, *Supra* Note 8 at 16-17.

<sup>32</sup> Though Government Code, Section 29.002, now provides that a reference in state law to “corporation court” means “municipal court,” the name change was not made official until the 1969 revision of the Code of Criminal Procedure.

<sup>33</sup> The term “recorder” stems from Norman law where it was the duty of the judicial officer to recite or testify from recollection as to what had previously transpired in court. Subsequently, the term denoted an appointed local official authorized to officially register important legal instruments (e.g., deeds, liens, mortgages).

<sup>34</sup> In 1971, Section 29.002(d), Government Code, was amended to provide that “a reference in the laws of this state to a ‘recorder’ means a ‘judge of a municipal court.’”

<sup>35</sup> U.S. Department of Justice, *Supra* Note 8 at 16-17.

<sup>36</sup> In 1983, the Office of Court Administration reported in the *Annual Report of the Texas Judicial System* an estimated 828 municipal courts and 1,073 judges. By the year 2009, OCA estimated that there were 916 municipal courts and 1,463 judges. OCA, *Supra* Note 1.

<sup>37</sup> Section 12.23, Penal Code.

misdemeanor as long as they are punishable by fine only.<sup>38</sup> Thus, for such non-Penal Code criminal offenses the maximum dollar amount is determined by the Legislature (*e.g.*, passing a school bus, defined in the Transportation Code, is punishable by a maximum fine of \$1,000). Additionally, following statutory changes in 1997, “fine only” means that courts may impose sanctions not consisting of confinement in jail or imprisonment. The imposition of a sanction or denial, suspension, or revocation of a privilege does not affect the original jurisdiction of the local trial courts in Texas.<sup>39</sup>

Municipal courts have original and exclusive jurisdiction over violations of city ordinances and the resolutions, rules, and orders of a joint airport board that occur in the territorial jurisdiction of the city and on property owned by the city in the city’s extraterritorial jurisdiction. Such violations are punishable by a fine up to \$500 or a fine not to exceed \$2,000 if the subject matter relates to health, fire safety, or zoning.<sup>40</sup> In Texas, ordinance violations punishable by the imposition of a fine are adjudicated as a criminal matter. Notably, such violations may only be adjudicated in a municipal court.<sup>41</sup>

Municipal courts also have concurrent jurisdiction with justice courts in offenses occurring within the territorial limits and on property owned by the city in the city’s extraterritorial jurisdiction.<sup>42</sup> In 2007, the Texas Legislature gave justice courts concurrent jurisdiction of city ordinance violations relating to the erection of signs. While, debatably, this change in law blurs the historic bright-line distinction between municipal and justice court jurisdiction (municipal courts at their inception were intended to be the exclusive venue for adjudicating city ordinance violations punishable by the imposition of a fine), by implication, the Legislature clarified what many municipal law practitioners had assumed (though it was not expressly stated in Texas law).<sup>43</sup> Specifically, municipal courts have jurisdiction of sign ordinance violations occurring in a municipality’s extraterritorial jurisdiction.<sup>44</sup>

Vague legislation and the piecemeal approach of the Legislature has contributed to the misconception that municipal courts have no civil jurisdiction. Municipal courts have limited civil jurisdiction for the purpose of bond forfeitures and are able to assess civil penalties for owners of dangerous dogs. Additionally, municipalities may declare the violation of city ordinances relating to parking and stopping vehicles to be civil offenses and prescribe the civil fines. These cities must establish an

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<sup>38</sup> Section 12.41(3), Penal Code.

<sup>39</sup> Articles 4.11, 4.14, Code of Criminal Procedure; Section 29.003, Government Code.

<sup>40</sup> Section 54.001, Local Government Code.

<sup>41</sup> Section 29.003(a), Government Code.

<sup>42</sup> Article 4.14, Code of Criminal Procedure, and Section 29.003, Government Code.

<sup>43</sup> 2007 Tex. Gen. Laws ch.1013 amended Article 4.11 Code of Criminal Procedure.

<sup>44</sup> Article 4.14(b) of the Code of Criminal Procedure expressly addresses fine-only criminal cases arising “within the territorial limits of the municipality.” Article 45.019(c) of the Code of Criminal Procedure requires that complaints “allege that the offense was committed in the territorial limits of the municipality.” These provisions have resulted in challenges to jurisdiction. Such challenges, however, have generally been treated as challenges to venue. See generally *Treadgill v. State*, 160 Tex. Crim. 658, 275 S.W.2d 658 (Tex. Crim. App. 1954). As venue is “non-jurisdictional,” appeals on such grounds have generally not been fruitful for appellants. Nonetheless, the plain language of the statutes when prosecuting offense in the extraterritorial jurisdiction are potentially problematic for prosecutors. As one appellate court explained, “The State is burdened with article 45.019(c) until a legislative revision occurs.” *State v. Blankenship*, 170 S.W.3d 676, 684 (Tex. App. Austin 2005).

administrative adjudication hearing procedure for these offenses. Cities with municipal courts of record may by ordinance expand the court's jurisdiction to include nuisance abatement.<sup>45</sup> Additionally, judges of such courts have writ power and the authority to issue administrative search warrants.<sup>46</sup>

## b. Trial and Appeals

In the year 2009, approximately 17 percent of cases filed in municipal courts resulted in a trial.<sup>47</sup> While 99 percent of cases were tried before a judge alone, more than 5,652 cases resulted in a jury trial. While under the U.S. Constitution, the 6<sup>th</sup> Amendment constitutional right to a trial by jury only applies to defendants charged with offenses punishable by imprisonment for more than six months,<sup>48</sup> the Texas Constitution extends the right to a jury trial to all criminal matters, including fine-only offenses.<sup>49</sup>

Depending on whether or not the court is a court of record, appeals from municipal courts differ. Most municipal courts in Texas are not courts of record. In courts of non-record, appeals result in a trial *de novo* (i.e., the case is tried once again before either the county court, county court at law, or other designated court as if the first trial never occurred).<sup>50</sup>

In municipal courts of record, appeals stem from the preservation of error in the clerk's record and the reporter's record.<sup>51</sup> Pursuant to a final judgment of guilt in a municipal court of record, defendants are not entitled to a trial *de novo*.<sup>52</sup> Rather, similar to appeals from county and district courts, appeals from municipal courts of record are governed by the Code of Criminal Procedure and must substantially conform to the Texas Rules of Appellate Procedure.<sup>53</sup> However, unlike appeals from county and district courts that are reviewed by the Court of Appeals, appeals from municipal courts of record are held in either the county court, county court at law, or a statutorily created municipal court of appeals.

<sup>45</sup> Section 30.00005(d), Government Code.

<sup>46</sup> Section 30.00006(e), Government Code. A *writ of mandamus* is a court order requiring a public official or corporation to act in a specific manner with the law. A *writ of habeas corpus* is a court order pertaining to the legality of an individual's detention or the circumstances of his or her detention. A *writ of attachment* is employed to enforce obedience to an order or judgment (e.g., to compel compliance with a subpoena or to seize property to secure a claim).

<sup>47</sup> In FY 2009, 7,849,523 cases were filed in Texas municipal courts. Of those cases filed and not dismissed, 2,017,986 proceeded to trial. OCA, *Supra* Note 1 at 59.

<sup>48</sup> *Baldwin v. New York*, 399 U.S. 66 (1970).

<sup>49</sup> *Bearden v. State*, 648 S.W.2d 688 (Tex. Crim. App. 1983); See also, Attorney General Opinion No. DM 97-097 (1997).

<sup>50</sup> Assuming compliance with Articles 45.042-45.043, Code of Criminal Procedure, in non-record municipal courts, defendants have the right to appeal upon the judge entering a final judgment of guilt regardless of whether the determination of guilt was a result of a plea or the rendering of a verdict.

<sup>51</sup> In *Ex parte Spring*, 586 S.W.2d 482 (Tex. Crim. App. 1978), the Court of Criminal Appeals held that municipal courts of record do not violate the Equal Protection Clause. In *Spring*, the appellant attempted to assert that municipal courts of record were unconstitutional because defendants convicted in non-record courts would be entitled to a trial *de novo*. Though the issue has never been considered by the courts, it is possible for an appeal from a municipal court of record to be reviewed by a non-attorney county court judge.

<sup>52</sup> Section 30.00014(b), Government Code.

<sup>53</sup> See, Sections 30.00016-30.00023, Government Code.

Under Legislation passed in 1997, known as The Municipal Courts of Record Act, a municipal court may become a court of record through passage of a local ordinance.<sup>54</sup> Barring, however, special legislation from the Legislature, a municipal judge of a court of record must be a licensed attorney with two years' experience practicing law in Texas. Currently, it is estimated that there are in excess of 70 municipal courts of record.

## 2. Justice Courts

In contrast to municipal courts, which are statutory courts, justice courts are a product of the Texas Constitution. The Texas Constitution provides that each county shall be divided into at least one, and not more than eight justice precincts, in each of which is to be elected one or two justices of the peace. Approximately 822 justice courts are in operation today.<sup>55</sup>

While most municipal judges are appointed, justices of the peace are elected by voters of the respective precinct of the county in partisan elections for four-year terms of office. There are no special statutory or constitutional qualifications to serve as a justice of the peace. Nine percent of justices of the peace in Texas are law school graduates.<sup>56</sup>

As previously stated, justices of the peace share concurrent original jurisdiction with municipal courts over criminal state law violations. Notably, however, justice courts do not have jurisdiction to adjudicate city ordinance violations, with one previously noted exception (sign ordinance violation in the extraterritorial jurisdiction). In terms of civil jurisdiction, justice courts have exclusive original jurisdiction in civil cases in which the amount in controversy (the amount of money or damages involved) is \$200 or less. They also have concurrent jurisdiction with both the county and district courts in civil matters where jurisdiction is not statutorily limited to the district or county courts and in which the amount in controversy is not more than \$10,000, exclusive of interest. By statute, justice courts have jurisdiction of cases involving forcible entry and detainer (evictions), foreclosure of mortgages, and enforcement of liens on personal property in cases where the amount in controversy is within the justice court's jurisdiction. There are other notable exceptions to a justice court's civil jurisdiction.<sup>57</sup> Trials in justice of the peace courts are not of record. Appeals from these courts are trial *de novo* in the county court, the county court at law, or the district court.

Finally, in rural areas without a medical examiner, justices of the peace act as coroners and are authorized to conduct inquests which involve inquiring into the causes and circumstances of any death

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<sup>54</sup> See generally, Chapter 30, Government Code. Prior to the Municipal Courts of Record Act, such municipal courts could only be created by the Legislature.

<sup>55</sup> OCA, *Supra* Note 1.

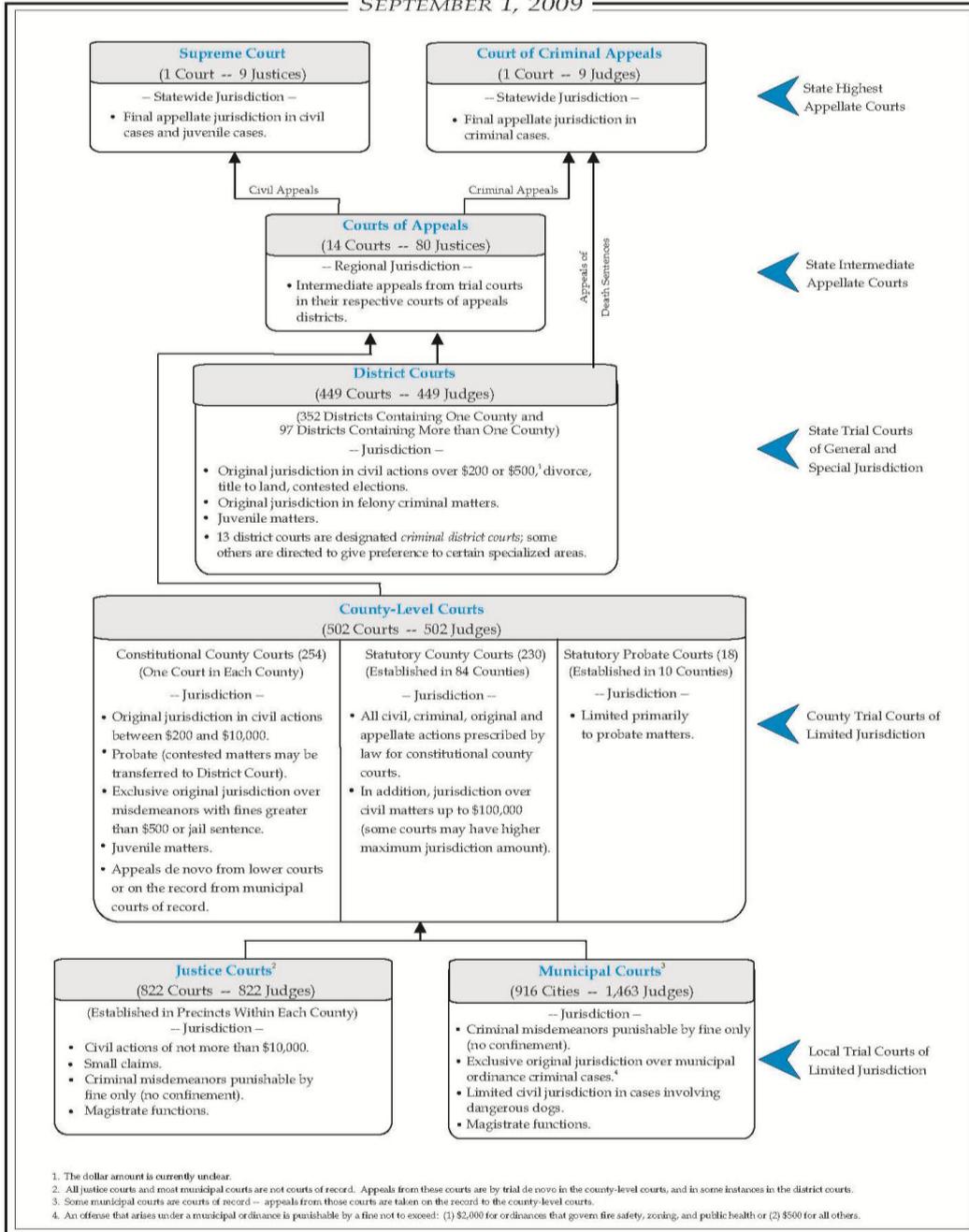
<sup>56</sup> OCA, *Supra*, Note 1.

<sup>57</sup> Justice courts do not have jurisdiction of a suit on behalf of the state to recover a penalty, forfeiture, or escheat; a suit for divorce; a suit to recover damages for slander or defamation of character; a suit for trial of title to land; or a suit for the enforcement of a lien on land. Section 27.031, Government Code.

Court Structure of Texas - September 1, 2009

COURT STRUCTURE OF TEXAS

SEPTEMBER 1, 2009



that occurs as a result of violent, sudden, or unnatural death.<sup>58</sup>

## B. County Trial Courts of Limited Jurisdiction

In comparison to other states, Texas is unique in that, in addition to having local trial courts of limited jurisdiction, it also has county trial courts of limited jurisdiction. There are three types of county trial courts of limited jurisdiction: constitutional county courts, county courts at law, and county probate courts.

### 1. Constitutional County Courts

As provided in the Texas Constitution, each of the state's 254 counties has a constitutional county court. In criminal matters, such courts can have original jurisdiction over Class A and B misdemeanors, as well as any misdemeanor punishable by a term of incarceration in jail.<sup>59</sup> Unless a statute creating an offense gives exclusive original jurisdiction to the justice court, constitutional county courts have concurrent criminal jurisdiction with justice courts over state law fine-only offenses.<sup>60</sup> In essence, this means that county courts share jurisdiction with justice and municipal courts over most fine-only offenses.<sup>61</sup> Constitutional county courts have the authority to issue writs necessary to enforce their jurisdiction.<sup>62</sup>

In terms of civil jurisdiction, constitutional county courts have concurrent civil jurisdiction with justice courts when the amount in controversy ranges from \$200 to \$10,000, exclusive of interest.<sup>63</sup> They have concurrent jurisdiction with district courts when the amount in controversy ranges from \$500 to \$5,000, exclusive of interest. Such county courts also have the general jurisdiction of a probate court in uncontested cases.<sup>64</sup>

<sup>58</sup> See generally Chapter 49, Code of Criminal Procedure. Prior to 1987, municipal judges were also authorized to conduct inquests. In 2009, legislation allowing municipal judges to perform inquests within a municipalities' territorial limits died in the final days of the 81<sup>st</sup> Regular Legislature.

<sup>59</sup> Class A misdemeanors are punishable by confinement not to exceed one year in jail and/or a fine not to exceed \$4,000 (Section 12.21, Penal Code). Class B misdemeanors are punishable by confinement not to exceed 180 days in jail and/or a fine not to exceed \$2,000 (Section 12.22, Penal Code). Additionally, if an offense is not a felony and confinement in jail is affixed to the offense as a possible punishment, it is adjudicated as if it were a Class B misdemeanor (Section 12.41, Penal Code).

<sup>60</sup> Article 4.07, Code of Criminal Procedure.

<sup>61</sup> *Fouke v. State*, 529 S.W.2d 772 (Tex. Crim. App. 1975).

<sup>62</sup> Article V, Section 16, Texas Constitution. Such writs include the *writ of mandamus*, *habeas corpus*, and attachment defined *Supra*, note 38. County courts may additionally issue a *writ of procedendo*, an order to a lower court to proceed to judgment. Such writs may be issued because the defendant did not perfect his or her appeal from municipal court to the county court. *Mann v. Brown*, 516 S.W.2d 22 (Tex. App.-Tyler 1974). It is inappropriate, however, for a county court to issue such a writ merely because the defendant seeking a trial *de novo* did not appear for trial county court. *Ex parte Swift*, 358 S.W.2d 629 (Tex. Crim. App. 1962).

<sup>63</sup> Section 26.042, Government Code.

<sup>64</sup> Section 4, Probate Code.

Some constitutional county courts have additional statutory authority. Thus, to ascertain the jurisdiction of any specific constitutional county court one must be familiar with specific legislation that may modify the court’s jurisdiction.<sup>65</sup>

Constitutional county court judges are selected by partisan election. Though they are required by the Texas Constitution to be “well informed of the law of the State,” they are not required to be attorneys. In 2009, 13 percent of constitutional county court judges were law school graduates.<sup>66</sup> Accordingly, though the appellate courts have never considered the issue, it appears possible for an appeal from a municipal court of record to be reviewed by a non-attorney county court judge.<sup>67</sup>

## **2. County Courts at Law**

There are 230 county courts at law established in 84 counties. Because the Texas Constitution limits each county to a single constitutional county court, the Legislature created statutory “county courts at law” to aid the single county court in its judicial functions. The civil and criminal jurisdiction of such statutory county-level trial courts varies considerably and is established by the statute that creates the particular court. County courts at law may be designated as juvenile courts. Some have subject matter jurisdiction in only limited fields, such as civil, criminal, or probate. In fact, some only hear matters appealed from municipal and justice courts. Others have jurisdiction over a diverse range of subject matter. The civil jurisdiction of most county courts at law is usually greater than that of the justice of the peace courts and less than that of the district courts. County court at law judges are selected through partisan elections. Candidates for county court at law judge position must be at least 25 years old, be a county resident for at least two years, and be a licensed attorney who has either practiced law or served as a judge for four years.

There are 18 statutorily created county probate courts in 10 Texas counties. The Texas Constitution grants the Legislature the authority to determine which Texas courts have jurisdiction over probate matters. The statutorily created county probate courts of Texas are located in the state’s six largest metropolitan areas and have original and exclusive jurisdiction over their counties’ probate matters, guardianship cases, and mental health commitments. In most counties, the constitutional county court has original probate jurisdiction. In some counties, the Legislature has authorized certain statutorily created county courts to share this original jurisdiction so that a county court at law will have concurrent jurisdiction over probate matters with the constitutional county court. The original probate jurisdiction of district courts is limited to those situations in which a contested probate matter is transferred from a constitutional county court and when the Legislature has granted the district court original control and jurisdiction over personal representatives. In the more populated counties, the Legislature has created county probate courts to exclusively hear probate matters. Thus, depending on the jurisdictional grant by the Legislature, probate matters might be heard in the county court, county court at law, statutory

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<sup>65</sup> Sections 26.101-26.354, Government Code.

<sup>66</sup> OCA, *Supra*, note 1 at 57.

<sup>67</sup> George E. Dix and Robert O. Dawson, 40 *Criminal Practice and Procedure*, Section 1.48 (Texas Practice 2d ed. 2001).

probate court, or district court of a particular county. The qualifications for county probate judge are the same as county court at law judge.

### 3. Appeals From Municipal Court

County level courts are unique in that they are the only trial courts that may also hear appeals. With noted exceptions, constitutional county courts have appellate jurisdiction in cases appealed from municipal and justice courts.<sup>68</sup> Unless the appeal is from a municipal court of record (where trial proceedings are recorded), the appeal takes the form of a trial *de novo* (a completely new trial). If a defendant is convicted in a municipal court of record, the county level court cannot choose to allow a retrial; rather it must determine the appeal on the basis of the record from the municipal court.<sup>69</sup> The authority of a county-level court of limited jurisdiction to hear appeals from a local-level court of limited jurisdiction is known as *incidental appellate jurisdiction*. Texas is one of only six states in the country to utilize incidental appellate jurisdiction among its courts of limited jurisdiction.<sup>70</sup>

The incidental appellate jurisdiction of a county level court extends to criminal subject matter originating in municipal court regardless if the offense is a city ordinance violation or if it is a violation of state law.<sup>71</sup> While original criminal jurisdiction in a county level court requires the filing of an information, in cases involving appeals from municipal and justice courts, jurisdiction is conferred by the filing of an appeal bond.<sup>72</sup> Unlike appeals from county and district court, there is no mechanism for extending the time to file an appeal bond when a motion for new trial has been filed in a municipal or justice court.<sup>73</sup>

### C. District Courts: State Trial Court of General Jurisdiction and Special Jurisdiction

District courts in Texas are constitutionally created trial courts of general jurisdiction. In 2009, there were 449 district courts. The geographical area served by each court is established by the Legislature, but each county must be served by at least one district court. In sparsely populated areas of the state, several

For a county-by-county breakdown of intermediate court of appeals regions, go to [www.courts.state.tx/appcourt.asp](http://www.courts.state.tx/appcourt.asp).

<sup>68</sup> A constitutional county court located in a county with a statutory criminal district court has no criminal jurisdiction (Section 26.045(c), Government Code). Additionally, the constitutional county court may transfer its jurisdiction to either the appropriate district court or county court at law (Article 4.11, Code of Criminal Procedure). Finally, a county court may not have criminal jurisdiction because of a specific statute governing either the county court at law or the municipal court of record. Accordingly, to ascertain the jurisdiction of a county court, readers must often be familiar with specific statutes impacting the local judiciary.

<sup>69</sup> Section 30.000014(b), Government Code; Article 44.17 and Article 45.042(b), Code of Criminal Procedure.

<sup>70</sup> See U.S. Department of Justice, *Supra* Note 6. Other states include Delaware, Georgia, Mississippi, Ohio, and Rhode Island.

<sup>71</sup> *Hickman v. State*, 183 S.W.1180 (Tex. Crim. App. 1916).

<sup>72</sup> Article 45.0426, Code of Criminal Procedure; *Schinzing v. State*, 234 S.W.3d 208, 211 (Tex.App.-Waco 2007, no pet.).

<sup>73</sup> In *Cuellar v. Cardenas*, 972 S.W.2d 826 (Tex.App.-Corpus Christi 1998), the Court of Appeals found that although the defendant had made a timely motion for new trial, the appeal bond was not filed within 10 days, thus the county court did not have jurisdiction.

counties may be served by a single district court, while an urban county may be served by many district courts. District courts have original jurisdiction in all felony criminal cases,<sup>74</sup> misdemeanors involving “official misconduct,” divorce cases, cases involving title to land, election contest cases, civil matters in which the amount in controversy is \$200 or more, and any matters in which jurisdiction is not placed in another trial court. While most district courts try both criminal and civil cases, in the more densely populated counties the courts may specialize in civil, criminal, juvenile, or family law matters (such courts are known as state trial courts of special jurisdiction). Such courts may be statutorily created in the same manner as a county court at law.<sup>75</sup>

Because municipal judges, acting as magistrates, are involved in the preliminary stages of a wide array of criminal offenses, they can potentially play an indirect role in adjudications in district court.<sup>76</sup>

Additionally, in the event that a party makes a motion to either disqualify or recuse a municipal judge, the case must be submitted to the presiding judge of the administrative judicial region.<sup>77</sup> Section 74.042 of the Government Code establishes nine administrative judicial

For additional information and to find the name and contact information for the presiding judge of the judicial region in your area, visit <http://www.courts.state.tx.us/courts/ajr.asp>.

regions in the State, with the presiding judge for each region being designated by the Governor. The presiding judge of the administrative judicial region is generally a current district judge.<sup>78</sup> Finally, in the event that a municipal judge finds an “officer of the court”<sup>79</sup> in contempt, the officer must be released on a personal bond pending the assignment of a trial judge to hear the contempt accusation by the presiding judge of the administrative judicial region.

#### **D. State Intermediate Appellate Courts**

The 14 courts of appeal have intermediate appellate jurisdiction in both civil and criminal cases appealed from district or county courts.<sup>80</sup> Each court of appeals has jurisdiction in a specific

<sup>74</sup> There are five categories of felonies in Texas. State jail felonies punishable by 180 days to two years in a state jail; an optional fine not to exceed \$10,000 (Section 12.35, Penal Code). Third-degree felonies are punishable by 2-10 years in prison; an optional fine not to exceed \$10,000 (Section 12.34, Penal Code). Second-degree felonies are punishable by 2-20 years in prison; an optional fine not to exceed \$10,000 (Section 12.33, Penal Code). First-degree felonies are punishable by 5-99 years in prison; an optional fine not to exceed \$10,000. Capital felonies are punishable by either life in prison or death by lethal injection (Section 12.31, Penal Code).

<sup>75</sup> See generally, Chapter 24, Government Code.

<sup>76</sup> Municipal judges acting as magistrates have been called to testify in suppression hearings in district court. See generally “Taking the Stand: Testifying on Juvenile Magistration,” *Municipal Court Recorder* Vol. 11, No. 1 (December 2001).

<sup>77</sup> Texas Rule of Civil Procedure 18. In terms of recusal and disqualification, the rules of civil procedure apply to all judges in criminal cases. *Arnold v. State*, 853 S.W.2d 543 (Tex. Crim. App. 1993).

<sup>78</sup> Section 74.045, Government Code. The judge may also be a retired district judge or an appellate judge with district court experience.

<sup>79</sup> Section 21.002, Government Code. “Officers of the court” generally refers to attorneys, bailiffs, and clerks. For additional information, see Chapter 5 Contempt.

<sup>80</sup> Courts of appeal are located in the following cities: Amarillo (District 7), Austin (District 3), Beaumont (District 9), Corpus Christi (District 13), Dallas (District 5), Eastland (District 11), El Paso (District 8), Fort Worth (District 2), Houston (two



Appeals from the district and county courts are neither automatic nor discretionary. In other words, while the appellant (the party making the appeal) must perfect their appeals in a timely manner, the court of appeals must generally hear the appeal. Such, however, is not the case in appeals of cases originating in municipal court. Article 4.03 of the Code of Criminal Procedure provides that a defendant convicted in municipal court and subsequently convicted again following a trial *de novo* in a county level court may only appeal their conviction to the appropriate court of appeals if the fine is \$100 or more or the sole issue on appeal is the constitutionality of the statute or ordinance on which the conviction is based. Defendants convicted in municipal courts of record who appeal to the county level court may also appeal their cases to the appropriate court of appeals. Three courts of appeals have construed Article 4.03 to provide jurisdiction to the court of appeals regardless if the case originates from a non-record municipal court or municipal court of record.<sup>81</sup> Albeit reluctantly, the 3<sup>rd</sup> Court of Appeals in Austin, however, has held that, because of the plain language contained in Section 30.0027 of the Government Code, it has no jurisdiction to consider a constitutional challenge to an ordinance when the fine assessed did not exceed \$100 and the case began in a municipal court of record.<sup>82</sup>

It should be noted that if the State prevails at trial in a municipal court of record and the conviction is reversed at the county level court, the State may appeal to the appropriate court of appeals. Because appeals from non-record municipal courts result in a trial *de novo*, acquittals in the county level court preclude appeal by the State.

Concurrently with the high appellate courts, the courts of appeals have writ power (*e.g.*, most commonly the *writ of mandamus* and the *writ of habeas corpus*). However, the authority of the courts of appeals to grant such extraordinary relief is limited to instances arising in county and district courts and when necessary to enforce its jurisdiction.<sup>83</sup> Accordingly, courts of appeals generally do not have the authority to order such extraordinary relief in either a municipal or justice court.<sup>84</sup> Generally, such relief in municipal court would be sought in a county court.<sup>85</sup> Alternatively, such equitable relief may be sought in district court.<sup>86</sup>

Since there are 14 appellate districts, it is important that judges know the location of their respective court of appeals. Most intermediate appellate courts now make their published opinions available

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<sup>81</sup> *Preston v. State*, 145 S.W.3d 683, 684 (Tex.App.-Corpus Christi 2004); *Boyd v. State*, 11 S.W.3d 324, 325 (Tex.App.-Houston [14<sup>th</sup> Dist.] 1999); *Lopez v. State*, 649 S.W.2d 165, 166 (Tex.App.-El Paso 1983).

<sup>82</sup> The Court explained “[w]e do not know if this distinction between cases that originate in municipal courts of record and cases that originate in municipal courts without record or justice of the peace courts was intended by the legislature or is merely an accident of statutory history. . . . Although we find ourselves bound to dismiss these appeals, we invite the legislature to revisit this issue and amend section 30.00027(a) to permit appeals of constitutional issues without regard to the amount of the fine.” *Alexander v. State*, 240 S.W.3d 72, 77 (Tex. App. Austin 2007).

<sup>83</sup> Section 22.221, Government Code.

<sup>84</sup> *In re Chang*, 176 S.W.3d. 45 (Tex.App.-Houston [14<sup>th</sup> Dist.] 2004); *Easton v. Franks*, 842 S.W.2d 772 (Tex.App.-Houston [1st Dist.] 1992).

<sup>85</sup> However, a county court's mandamus power is limited to that which is necessary to enforce its jurisdiction and does not extend to potential jurisdiction. *Lozano v. Acevedo*, 659 S.W.2d 919 (Tex.App.-San Antonio 1983).

<sup>86</sup> See, generally, *Thompson v. Velasquez*, 155 S.W.3d 551 (Tex. App. San Antonio 2004).

online. Such opinions constitute case law and are published in the *South Western Reporter Series*.<sup>87</sup> Published decisions constitute case law. A court of appeal may, however, construe laws differently. Thus, barring an opinion by either of the state’s highest appellate courts, such published opinions are only controlling authority in their territory (not to say they cannot be persuasive in others).

Court of appeals justices are selected by partisan elections and serve six-year overlapping terms. Candidates must be at least 35 years of age, a citizen of the United States and of Texas, and a practicing attorney or a judge for a court of record for at least 10 years.

## **E. State Highest Appellate Courts**

Texas is one of two states in the United States (the other being Oklahoma) to have a bifurcated (divided into two courts) high appellate court system. Review by either the Court of Criminal Appeals or Supreme Court of Texas is generally not a matter of right, but of sound judicial discretion. Four votes are required for a case to be reviewed by either court.<sup>88</sup> Respective to their jurisdictions, each court has legislative authority to create rules of evidence and procedure. Additionally, each court has jurisdiction to answer certified questions posed to it by federal appellate courts. The qualifications for each court are the same as the court of appeals. Because they are coequals within their respective jurisdictions, there are no cross appeals between the two courts of last resort. While each court construes both the Federal and State Constitutions, they are the final authority in construing the Texas Constitution. Appellants wishing to appeal beyond either of the high courts must couch their appeals in terms of the Federal Constitution. In such cases, appeals may be made to the U. S. Supreme Court.

### **1. Court of Criminal Appeals**

The Court of Criminal Appeals is the highest state court of appeal for criminal subject matter. The Court holds sessions throughout the year in Austin, Texas. The Court is comprised of nine members—a Presiding Judge, and eight Judges. Decisions of courts of appeals in a criminal case may be appealed to the Court of Criminal Appeals by petition for discretionary review (PDR), filed by the State or the defendant, or both. Alternatively, the Court may review a decision on its own motion. All cases that result in the death penalty are automatically directed to the Court of Criminal Appeals from the trial court level. The Court also hears direct appeals stemming from the denial of bail. Determinations of the Court are final unless they involve a question of federal constitutional law.

Prior to 1981, all criminal cases were appealed directly to the Court of Criminal Appeals from the district and county courts. During this period of time, municipal and justice court cases could not be appealed beyond the county level courts unless the fine exceeded \$100 dollars. In such cases, the only appeal remaining was to the U.S. Supreme Court.

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<sup>87</sup> For more information on case law and the *South Western Reporter Series*, see Chapter 8 Legal Research.

<sup>88</sup> Known euphemistically as “the rule of four” in criminal cases, see Texas Rules of Appellate Procedure 69.1.

While relatively few cases reaching the Court of Criminal Appeals directly pertain to municipal courts, the decisions of the Court remain of paramount importance. Not only do the opinions of the Court directly impact the civil liberties of the people of Texas, but they often establish case law that controls how all Texas courts are to construe the procedural and substantive criminal laws.

The Court of Criminal Appeals oversees the administration of the Judicial and Court Personnel Training Fund that funds judicial education for all levels of the judiciary.<sup>89</sup>

## 2. Supreme Court

The Supreme Court has statewide, final appellate jurisdiction in all civil cases (which includes juvenile law). Most of the cases that are heard by this Court are appeals from an appellate ruling by one of the intermediate courts of appeals. The Supreme Court also has the authority to determine certain legal matters over which no other court has jurisdiction. The Court consists of a Chief Justice and eight Justices. Decisions of the Courts of Appeals in civil cases may be appealed to the Supreme Court by either or both parties through the filing of a petition for review (formerly “writ of error”).

In addition to its adjudicative functions, the Supreme Court has many administrative duties. The Court is responsible for overseeing the efficient operation of the Texas judicial system. Accordingly, it promulgates the rules of administration for the Texas judicial system, the rules for the operation of the Office of Court Administration, the Commission on Judicial Conduct, the State Bar of Texas, the Court Reporter Certification Board, and other state agencies in the judicial branch of government. An important administrative function of the Supreme Court is the transfer of cases between the 14 courts of appeals to ensure an equal workload distribution among those courts.

## IV. Magistrate Functions

Article 2.09 of the Code of Criminal Procedure contains a statutory list of those who are magistrates. While all judges (including justices and justices of the peace) are magistrates, not all magistrates are judges (*e.g.*, mayors). Additionally, beginning in the latter half of the 20<sup>th</sup> century, there has been a legislative trend toward the creation of other statutory magistrates (*e.g.*, criminal law hearing officers, masters, referees, and magistrates appointed by district courts in certain counties).<sup>90</sup> Such magistrates are generally created to meet the local criminal justice needs throughout the state but are not truly judges. Unlike judges, who have a term of office, many statutory magistrates serve at the pleasure of the entity that appointed them (*i.e.*, they are employees). Some statutory magistrates do not have the ability to sign a final judgment; others can only perform acts assigned to them by a district or county judge. The creation of such positions, while improving the efficiency of the judicial system, has blurred the important distinction between **judges** and **magistrates**. Such confusion is potentially a threat to the judicial independence of municipal judges who are appointed to a term of office and are not employees.

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<sup>89</sup> See, generally, Chapter 56, Government Code.

<sup>90</sup> See, generally, Chapter 54 Government Code.

While every member of the judiciary in Texas is a magistrate, municipal judges and justices of the peace perform more magistrate duties than all other members of the judiciary combined. In the capacity of a magistrate, municipal judges serve an important gate-keeping function in the adjudication of all criminal matters (misdemeanors and felonies).

## A. Warrants

What is a warrant? An arrest warrant is a writ, “a written order from a magistrate, directed to a peace officer or some other person specifically named, commanding him to take the body of the person accused of an offense to be dealt with according to law.”<sup>91</sup> An arrest warrant must be supported by a sworn affidavit containing substantial facts establishing probable cause in every instance in which an arrest warrant is requested. (In fiscal year 2009, the Office of Court Administration [OCA] reported that municipal judges issued 2,782,432 arrest warrants.) In contrast to an arrest warrant, another type of writ is a search warrant: “a written order, issued by a magistrate and directed to a peace officer, commanding him to search for any property or thing and to seize the same and bring it before [the] magistrate or commanding him to search for and photograph a child and deliver to the magistrate any of the film exposed pursuant to the order.”<sup>92</sup> (According to the OCA, in fiscal year 2009, municipal judges issued 7,256 search warrants.)

The purpose of the search provisions in both Article I, Section 9 of the Texas Constitution<sup>93</sup> and the 4th Amendment of the U. S. Constitution<sup>94</sup> is to safeguard the privacy and security of individuals against arbitrary invasion.<sup>95</sup> As neutral and detached public officials, magistrates serve as an institutional safety mechanism that protects the citizenry from unreasonable searches and seizures.

Underlying the determination of whether or not to issue a warrant is the concept of probable cause. Magistrates are called upon to issue warrants for the search and/or seizure of persons, places, or things based on a sworn affidavit presented by a law enforcement officer. It is the duty of the magistrate to determine, prior to the issuance of a warrant, whether or not probable cause exists.

Without the initial finding of probable cause, the warrant should not be issued. Probable cause exists where the police have reasonably trustworthy information sufficient to warrant a reasonable person to believe a particular person has committed or is committing an offense. “The determination of the existence of probable cause concerns the factual and practical considerations of everyday life on which reasonable and

For additional information on the issuance of search and arrest warrants, see *TMCEC Bench Book*.

<sup>91</sup> Article I, Section 9, Texas Constitution; Article 15.01, Code of Criminal Procedure.

<sup>92</sup> Article 18.01(a), Code of Criminal Procedure.

<sup>93</sup> “The people shall be secure in their persons, houses, papers, and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.”

<sup>94</sup> “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

<sup>95</sup> *Juarez v. State*, 758 S.W.2d 772 (Tex. Crim. App. 1988).

prudent [people], not legal technicians, act.”<sup>96</sup> “Probable cause deals with probabilities; it requires more than mere suspicion but far less evidence than that needed to support a conviction or even that needed to support a finding by a preponderance of the evidence.<sup>97</sup> The rule of probable cause seeks to accommodate the sometimes opposing interests of safeguarding citizens from rash and unreasonable police conduct and giving fair leeway to legitimate law enforcement efforts.”<sup>98</sup> In determining whether or not probable cause exists, the reviewing magistrate is limited to considering only that information contained within the “four corners” of the affidavit presented by the law enforcement officer (hence the “four corners” rule). Accordingly, verbal statements made by the affiant during the reviewing process may not be considered in determining probable cause.

## B. Presentation Before the Magistrate

An initial appearance is required promptly after the arrest of the suspect. The law requires the appearance be within 24 or 48 hours.<sup>99</sup> At the initial appearance, the magistrate informs the defendant of his or her rights and explains the formal charge or charges pending against the defendant. Additionally, it is at this time that the issues of appointment of counsel and indigence may be raised.<sup>100</sup> If the arrest was made without a warrant, probable cause may be determined. If the magistrate has jurisdiction over the offense, he or she may accept a plea at this time. Though Texas law has long embraced the general concept of requiring that the accused be promptly taken before a magistrate, the Texas Code of Criminal Procedure has never specified a name for such proceeding. This has caused more than a little confusion amongst scholars and courts. While the term “initial appearance” suitably describes what is required under Texas law, readers should be aware that Texas case law synonymously uses various descriptive terms including “magistratized,” “magistrated,”<sup>101</sup> “Article 15.17 Appearance,”<sup>102</sup> and “Preliminary Initial Appearance (PIA).”<sup>103</sup> With little hope of clarifying legislation on the horizon, such ambiguity is likely to continue. While the Court of Criminal Appeals has shown no preference to any one term, it has taken issue with courts and attorneys mistakenly referring to it as an

For additional information on conducting an “Article 15.17 hearing,” see *TMCEC Bench Book*.

<sup>96</sup> *Woodward v. State*, 668 S.W.2d 337, 345 (Tex. Crim. App. 1982).

<sup>97</sup> *United States v. Woolery*, 670 F.2d 513, 515 (5<sup>th</sup> Cir. 1982).

<sup>98</sup> *Woodward v. State*, 668 S.W.2d at 345-46.

<sup>99</sup> *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991); Articles 14.06(a) and 15.17, Code of Criminal Procedure.

<sup>100</sup> The 77<sup>th</sup> Legislature passed Senate Bill 7 creating the Texas Fair Defense Act. The Act provides how and when counsel must be appointed to represent indigent defendants. The judges of county and district courts trying criminal cases were required to prepare written countywide procedures for timely and fairly appointing counsel in these cases. All 254 counties have submitted their interim countywide procedures to the Office of Court Administration (OCA). The county and district courts may designate a magistrate to appoint counsel. Accordingly, all magistrates are strongly encouraged to contact their local district or county judges to ascertain what role, if any, they will serve in their county’s implementation of the Texas Fair Defense Act.

<sup>101</sup> *Watson v. State*, 762 S.W.2d 591, 594 (Tex. Crim. App. 1988).

<sup>102</sup> *State v. Vogel*, 852 S.W.2d 567, 569-570 (Tex. App.-Dallas 1992, pet. ref’d).

<sup>103</sup> *Green v. State*, 872 S.W.2d 717 (Tex. Crim. App. 1994). Holding that PIA is not a “critical stage” where right to counsel attaches.

“arraignment.”<sup>104</sup> In *Rothgery v. Gillespie County*, the U.S. Supreme Court held that the presentation before a magistrate is an adversarial judicial proceeding in which the 6<sup>th</sup> Amendment right to counsel attaches.<sup>105</sup> In reaching its decision, the majority stated: “Texas law has no formal label for this initial appearance before a magistrate, which is sometimes called the “Article 15.17 hearing”; it combines the Fourth Amendment’s required probable-cause determination with the setting of bail, and is the point at which the arrestee is formally apprised of the accusation against him.”<sup>106</sup> In concurring opinions, three members of the Court use the Texas terminology “magistration” in lieu of either “Article 15.17 hearing” or “initial appearance.”<sup>107</sup> In his dissent, Justice Thomas states that the majority’s attempt at classification based off of precedent is flawed because earlier cases dealt with “arraignment” and not an “initial appearance” (or “magistration”) and that “[t]he Sixth Amendment consequences of a proceeding should turn on the substance of what happens there, not on what the State chooses to call it.”<sup>108</sup>

### C. Bail

If the accused has not been released by law enforcement prior to being brought before the court, the judge, acting as a magistrate, will set bail and in some cases order special conditions for pretrial release. Under Texas law, the accused can generally secure release in one of the following three ways: (1) post the full amount of bail in the form of money (*i.e.*, a cash bond); (2) the amount of bail may be posted by a third person (*i.e.*, a surety bond); or (3) the accused may be released on his or her own recognizance in lieu of a monetary bond (*i.e.*, a personal bond). The law generally requires that bail be set at an amount to assure the appearance of the accused in light of his or her financial resources and ties to the community and bail is not to be used as an instrument of oppression.

For additional information on setting bail and related issues, see *TMCEC Bench Book*.

### D. Magistrate Order for Emergency Protection (MOEP)

According to data from the OCA, between 1999 and 2009 the number of emergency protection orders issued by municipal judges in their magistrate capacity increased 212 percent.<sup>109</sup>

<sup>104</sup> *Watson v. State*, 762 S.W.2d 591, 594 (Tex. Crim. App. 1988). Arraignments are detailed in Chapter 26 of the Code of Criminal Procedure. Arraignments occur in felony cases and misdemeanors punishable by incarceration. In such cases, an arraignment occurs after the accused is presented before the magistrate. The purpose of an arraignment is to formally identify the defendant, allow the defendant to enter a plea, and to appoint counsel if necessary. Unless waived, service of process upon the defendant is required at least two days prior to an arraignment.

<sup>105</sup> 128 S. Ct. 2578 (2008).

<sup>106</sup> *Rothgery*, 2581-2582 (internal citations omitted). The majority acknowledged that such a hearing met the general definition of what some academics have described as a “preliminary arraignment” or “arraignment on the complaint,” but nonetheless concluded that “Texas’s Article 15.17 hearing is an initial appearance: Rothgery was taken before a magistrate judge, informed of the formal accusation against him, and sent to jail until he posted bail.” *Id.* at 2584.

<sup>107</sup> *Id.* at 2592-2595.

<sup>108</sup> *Id.* at 2603.

<sup>109</sup> In 1999, municipal judges signed 3,353 orders. In 2009, municipal judges signed 10,471.

At a defendant’s first appearance before a magistrate after having been arrested for an offense involving family violence or stalking, the magistrate may issue a Magistrate’s Order for Emergency Protection (MOEP).<sup>110</sup> An MOEP, also known as an EPO (Emergency Protection Order), is preferable to the use of a peace bond.<sup>111</sup> An MOEP may be granted without prompting or suggestion by the magistrate or upon the motion of the victim, the victim’s guardian, a peace officer, or the attorney representing the State.<sup>112</sup> If the defendant is arrested for an offense involving serious bodily injury or the use or exhibition of a deadly weapon, the magistrate is without discretion and required to issue the order.<sup>113</sup>

For additional information on issuing a Magistrate’s Order for Emergency Protection, see TMCEC *Bench Book*.

**E. Examining Trials**

Following arrest, suspects in the United States are entitled to a timely preliminary hearing before a neutral magistrate to determine if probable cause exists that justifies detaining the defendant prior to trial.<sup>114</sup> In Texas, such a preliminary hearing is known as an examining trial.<sup>115</sup> The general underlying function of an examining trial is to protect citizens and society from the consequences and financial costs of unwarranted prosecutions. Notably, there is no federal constitutional right to an examining trial.<sup>116</sup> Additionally, a grand jury indictment terminates a defendant’s statutory right to an examining trial.<sup>117</sup> Not all criminal defendants are entitled to an examining trial—only defendants accused of felonies. Finally, while municipal judges in their capacity as magistrates may conduct examining trials, they are not authorized to conduct examining trials in capital cases.<sup>118</sup>

For additional information on conducting an examining trial, see TMCEC *Bench Book*.

**F. Miscellaneous**

The aforementioned magistrate functions are by no means exhaustive. Magistrates are also authorized to conduct property hearings,<sup>119</sup> issue summons,<sup>120</sup> order protection by a peace officer,<sup>121</sup> issue writs of attachment,<sup>122</sup> issue emergency mental commitments,<sup>123</sup> and conduct tow hearings.<sup>124</sup>

<sup>110</sup> Article 17.292, Code of Criminal Procedure.

<sup>111</sup> Though Chapter 7 of the Code of Criminal Procedure authorizes Texas magistrates to issue peace bonds, the general consensus among legal scholars and practitioners is that peace bonds are archaic and riddled with legal problems. See generally, Sidney Childress, “Peace Bonds – Ancient Anachronism or Viable Criminal Prevention Devices?,” 21 Am. J. Crim. L. 107 (1994). In light of disciplinary actions against magistrates who have used them (see, *State Commission on Judicial Conduct 2000: Annual Report*, 64 TXBJ 298, 310), their use is generally discouraged.

<sup>112</sup> Article 17.292(a)(1-4), Code of Criminal Procedure.

<sup>113</sup> Article 17.292(b)(1-2), Code of Criminal Procedure.

<sup>114</sup> *Gerstein v. Pugh*, 420 U.S. 103 (1975).

<sup>115</sup> *Rothgery v. Gillespie County*, 128 S. Ct. 2578, 2585 n. 12 (2008).

<sup>116</sup> *Harris v. Estelle*, 487 F.2d, 1293 (5th Cir. 1974).

<sup>117</sup> *State ex rel. Holmes v. Salinas*, 784 S.W.2d 421 (Tex. Crim. App. 1990).

<sup>118</sup> Article 16.15, Code of Criminal Procedure.

## V. The Role of Municipal Courts in Local Government

The role of municipal courts in city government has at times proven problematic for all parties involved. As previously detailed in our discussion of the constitutional origins of municipal courts, following the decision in *Ex parte Wilbarger*<sup>125</sup> (acknowledging that the Texas Constitution permits jurisdiction of state law offenses to be given to municipal courts), the Court of Criminal Appeals has consistently held that despite the fact that they exist in the context of city government, municipal courts are state trial courts and “are governed by the same rules of practice as are other state courts.”<sup>126</sup> This often overlooked statement of law has long been the source of various intergovernmental problems that are unique to municipal courts.

### A. Whose Court Is It Anyway?

Since municipal courts are locally funded, operated, and administered, there is a common tendency for municipal officials (city council members, mayors, city managers, *etc.*), to view their municipal court in a light similar to other city departments. Municipal courts are, however, different. Neither municipal courts<sup>127</sup> nor local ordinances<sup>128</sup> are a product of municipal sovereignty. As previously detailed, municipal courts originate from two sources: the Texas Constitution and the State Legislature. As explained in *Ex parte Quintanilla*,<sup>129</sup> despite their location within municipalities, they are in fact “state,” not “city,” trial courts. Because cities are not required to have municipal courts, all local governing bodies, officials, and employees should be mindful that activating a state trial court at the municipal level of government subjects the entire city government to a wide array of state and federal laws. This legal fact poses many questions that have yet to be definitively resolved.

### B. Judicial Independence

Municipal judges are entrusted with the independent and sovereign powers, of a public office, including judicial oath, membership in the judiciary, authority to pronounce judgment and to adjudicate parties'

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<sup>119</sup> Article 18.17, Code of Criminal Procedure.

<sup>120</sup> Article 15.03, Code of Criminal Procedure.

<sup>121</sup> Article 7.15, Code of Criminal Procedure.

<sup>122</sup> Article 24.11, Code of Criminal Procedure.

<sup>123</sup> See, Chapter 2-33, TMCEC *Bench Book*.

<sup>124</sup> See, Chapter 2-36, TMCEC *Bench Book*.

<sup>125</sup> *Ex parte Wilbarger*, 55 S.W. 968 (Tex. Crim. App. 1900).

<sup>126</sup> *Ex parte Quintanilla*, 207 S.W.2d 377 (Tex. Crim. App. 1947).

<sup>127</sup> In fact, the law has long been clear that municipalities have no independent right to exist separate from the conditional authority given to them that is subject to legislative discretion. Thus, the charters of a municipality “may be annulled or revoked at the will and pleasure of the Legislature, as it deems the public good may require... .” *Blessing v. City of Galveston*, 42 Tex. 641, 657-658 (1875).

<sup>128</sup> *Pye v. Peterson*, 45 Tex. 312 (1876).

<sup>129</sup> 207 S.W.2d 377 (Tex. Crim. App. 1947).

rights, and a fixed term subject to removal.<sup>130</sup>

Nevertheless, it is not uncommon for municipal judges to find themselves embattled in disputes relating to the court. At the core of many local conflicts involving municipal courts are questions about the relationship between the municipal court (including court personnel) and the city council, mayor, and city manager. A fundamental principle of American jurisprudence is the doctrine of separation of powers.<sup>131</sup> The doctrine of separation of powers serves as a “self-executing safeguard against the encroachment or aggrandizement of one branch [of government] at the expense of the other.”<sup>132</sup> “The purpose of separation and equilibration of powers in general ... [is] not merely to assure effective government but to preserve individual freedom.”<sup>133</sup> Although the Federal Constitution does not expressly provide for the separation of powers, the framers of the Texas Constitution expressly incorporated it in each of the Texas Constitutions.<sup>134</sup> In explaining the doctrine, as it exists in Texas, the Court of Criminal Appeals has stated:

Article II, § 1, in a single, tersely phrased paragraph, provides that the constitutional division of the government into three departments (Legislative, Executive and Judicial) shall remain intact, “except in the instances herein expressly permitted.” This separation of the powers of government ensures “that a power which has been granted to one department of government may be exercised only by that branch to the exclusion of others.” The separation of powers doctrine therefore requires that “any attempt by one department of government to interfere with the powers of another is null and void.”<sup>135</sup>

While it is not illogical to analogize municipal government to the three branches of federal and state government (the mayor represents the executive branch; the city council represents the legislative branch; the municipal court represents the judicial branch), such an analogy is not necessarily applicable to all municipalities. In comparison to federal and state government, municipal governments are neither as uniform in structure nor as rigid in terms of power distribution.<sup>136</sup> Additionally, there are not always traditional “checks and balances” in municipal government between the city council, mayor, and

<sup>130</sup> *City of Roman Forest v. Stockman*, 141 S.W.3d 805, 810 (Tex. App. Beaumont 2004) citing *Thompson v. City of Austin*, 979 S.W.2d 676, 682-683 (Tex. App.-Austin 1998).

<sup>131</sup> “The governments of states and the United States are divided into three departments or branches: the legislative which is empowered to make laws, the executive which is required to carry out the laws, and the judicial which is charged with interpreting the laws and adjudicate disputes under the law. Under this constitutional doctrine ... one branch is not permitted to encroach on the domain or exercise the powers of another. See U.S. Constitution, Articles I-III.” *Black’s Law Dictionary*, 6<sup>th</sup> Edition (1990).

<sup>132</sup> *Buckley v. Valeo*, 424 U.S. 1, 122 (1976).

<sup>133</sup> *Morrison v. Olson*, 108 S.Ct. 2597, 2637 (1988) (Scalia, J dissenting).

<sup>134</sup> “The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one, those which are Executive to another and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.” Article II, Section 1, Texas Constitution.

<sup>135</sup> *Meshell v. State*, 739 S.W.2d 246, 252 (Tex. Crim. App. 1987).

<sup>136</sup> See, generally, *Brooks*, *Supra* note 13 at Section 1.01.

municipal court. Ultimately, to ascertain the structure and power distribution of any municipal government, one must examine either the special act of the Legislature creating the municipality, the general-law provisions, or the city charter. Regardless of local structure, municipal officials should be careful not to usurp or exercise judicial power that state law gives only to municipal courts.

Regardless of whether separation of powers exists within municipal government, the Supreme Court has stated that in Texas the “inherent judicial power” of a court is not derived from, as distinctly as the state and federal levels, legislative grant or specific constitutional provision but from the very fact that the court has been created and charged by the Constitution with certain duties and responsibilities; the inherent powers of a court are those which it may call upon to aid in the exercise of its jurisdiction, in the administration of justice, and in the preservation of its independence and integrity.”<sup>137</sup>

Accordingly, preservation of public confidence in the administration of justice requires city officials and their employees to constantly acknowledge and scrupulously guard the judicial independence of the municipal court. Municipal courts must not act, or be expected to operate, as a rubber stamp for the mayor, city manager, police department, or any other operating department. Judicial independence is essential in ensuring the public access to a neutral arbiter, unencumbered by local politics or personal agendas. Judicial independence does not insulate a judge from allegations of misconduct. As explained by the Texas Supreme Court, “An independent and vigorous judiciary is essential as a bulwark to protect the rights of our citizens. Yet independence of the judiciary is not inconsistent with accountability for judicial conduct; the lack of judicial accountability may in and of itself be the greatest danger to judicial independence.”<sup>138</sup>

Preserving judicial independence and avoiding the appearance of impropriety is frequently difficult in small municipalities. When judges act also as clerks, clerks serve in other various municipal capacities (city secretary, police dispatcher, *etc.*), or where the offices of the court are located in the same building as the police department, the potential for ethical and legal troubles are significantly increased. Ideally, these situations should be altogether avoided. At a minimum, however, municipal judges and local officials should devise strategies and make concerted efforts to avoid the appearance of impropriety.<sup>139</sup> Because municipal courts make up the greatest portion of the judicial system, and because more people come into contact with municipal courts on a daily basis than all other Texas courts combined, it is imperative that all Texas municipalities be mindful that maintaining public confidence in all Texas courts begins at home, in the local trial courts.

### **C. Tension Between Express and Implicit Functions of Municipal Courts**

While municipal courts serve the express function of preserving public safety, protecting the quality of life in Texas communities, and deterring future criminal behavior, there is no denying the implicit,

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<sup>137</sup> *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398 (Tex. 1979).

<sup>138</sup> *In re Lowery*, 999 S.W.2d 639 (Tex. 1998).

<sup>139</sup> Common examples to be avoided: judges and or clerks discussing the merits of pending cases with either peace officers or prosecutors; judges advising peace officers or prosecutors on which cases should be filed.

though significant, function of revenue generation.<sup>140</sup> The conflict between the express function and consequential implicit function of municipal courts is potentially an additional source of tension in municipal government. Not surprisingly, a common complaint regarding local trial courts is that they engage in “cash register justice.” Regardless of what portion of a city’s budget comes from fines and court costs, a municipal court should not be viewed by a public official or the public at large as being tantamount to a “cash cow” or an ATM for local expenditures. Conversely, judges must recognize that mayors, city managers, and council members are required to be concerned about revenues. While finding a balance between judicial independence and fiscal reality may present special challenges in municipal government, achieving such a balance should be a goal shared by all members of municipal government. Ethically, a judge is prohibited from setting fines for the purpose of either satisfying or dissatisfying the city council, city manager, or mayor. Justice requires, regardless of intergovernmental pressures, that a municipal judge decide each case upon its merits. While city councils may create violations, and law enforcement and prosecutors may make formal accusations, only a court may determine if a legal violation has occurred.<sup>141</sup>

#### **D. State Law**

The inappropriate enforcement and adjudication of state traffic laws in local and county governments resulted in the passage of state laws designed to penalize local governments and public officials who use their courts predominantly for the purposes of funding city government.<sup>142</sup>

Local governments are legally prohibited from having traffic offense quotas Section 720.002 of the Transportation Code prohibits municipalities from either formally or informally establishing a plan to evaluate, promote, compensate, or discipline a municipal judge or peace officer based on the number of citations issued or fines collected. Furthermore, the law prohibits municipal officials and employees from expecting, requiring, or even suggesting that a municipal court or municipal judge collect a predetermined amount of money from persons convicted of a traffic offense during any period of time. Additionally, municipal officials or employees may not expect, require, or suggest that a peace officer issue a predetermined or specified number of traffic citations within a specified period.

The Legislature’s repeal of Section 720.002(c) in 2009 clarifies that the prohibition of traffic quotas is, in fact, intended to prohibit municipalities from considering the amount of revenue collected by municipal courts when evaluating the performance of municipal judges for purposes of determining reappointment.<sup>143</sup> The law does not, however, prohibit municipalities from obtaining budgetary

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<sup>140</sup> In FY 2009 alone, Texas municipal courts generated more than \$734 million in revenue for local and state government (more than all other courts in Texas combined). See, OCA, *Supra* note 1 at 59.

<sup>141</sup> “Neither the Legislature nor city council can by a declaration make that a nuisance which is not in fact a nuisance, and the question as to whether or not a building is a nuisance, is a justifiable question, determined alone by the court or jury having the case.” *Hart v. City of Dallas*, 565 S.W.2d 373 (Tex. Civ. App.-Tyler 1978).

<sup>142</sup> In addition to Chapter 720, Section 542.402(b) of the Transportation Code places a 30 percent cap on the amount of revenue that may be collected locally in the form of fines.

<sup>143</sup> Repealed by Acts 2009, 81<sup>st</sup> Leg., ch. 737 (S.B.420), effective June 19, 2009.

information from a municipal court including an estimate of the amount of money the court anticipates will be collected in a budget year.<sup>144</sup>

It is important that mayors, city managers, and city attorneys know that municipalities have been subject to costly whistleblower lawsuits for violating the State’s prohibition against traffic-offense quotas.<sup>145</sup> In addition to applicable criminal penalties,<sup>146</sup> a violation of Section 720.002 by an elected official is misconduct and a ground for removal from office. A violation of the law by a person who is not an elected official is a ground for removal from the person’s position.<sup>147</sup>

## **VI. Basic Municipal Court Organization**

Although some of the fundamental elements of municipal courts in Texas are authorized or required by law, municipalities have some 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 have been empowered to enact charter and ordinance provisions not inconsistent with state law that prescribe structural details of local court organization. Texas statutes also provide general-law cities some choices regarding the organization of the court. Thus, variations exist throughout the state with regard to court organization. The basic organization of the municipal court personnel consists of the following officers of the court: judge(s), court clerk(s), deputy clerk(s), prosecutor(s), bailiff(s), warrant officer(s), and defense counsel.

### **A. Judge**

The judge is responsible for presiding over trials and other court proceedings and for the general administration of the court. Additionally, as previously detailed, all judges in Texas are magistrates. It is important that when acting in an official capacity that all judges are able to differentiate between judicial and magistrate duties and authority. 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.

In the capacity of a trial court judge, the judge is not an adversary and must decide questions only on the basis of law. He or she must never assume the role of prosecutor or of defense counsel or act as special advisor to the police or as rubber stamp of law enforcement. The judge must 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 law can be the legitimate basis for any judicial decision. Accordingly, the judge must allow prosecution and defense, as well as all other components of the system, to perform their duties vigorously but always within the limits allowed by law.

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<sup>144</sup> Section 720.002(d), Transportation Code.

<sup>145</sup> *City of Jersey Village v. Campbell*, 920 S.W.2d 694 (Tex. App.-Houston [1 Dist.] 1996); *City of Austin v. Ender* 30 S.W.3d 590 (Tex. App.-Austin 2000).

<sup>146</sup> Official oppression Section 39.03(a)(2), Penal Code.

<sup>147</sup> Section 720.002(e), Transportation Code.

Municipal judges are public officials. This is significant in that Article XVI, Section 40, of the Texas Constitution provides in pertinent part that:

No person shall hold or exercise at the same time, more than one civil office of emolument, except that of Justice of the Peace. . . . It is further provided that a nonelective state officer may hold other nonelective offices under the state or the United States, if the other office is of benefit to the State of Texas or is required by the state or federal law, and there is no conflict with the original office for which he receives salary or compensation. . . .

This provision raises the issue of whether a municipal judge may serve more than one municipality as judge. In 1996, the Office of the State Attorney General addressed whether a municipal judge may serve in a dual capacity.<sup>148</sup> The opinion states that a compensated municipal judge — whether full-time or part-time, elected or appointed — holds a “public office” and is subject to Article XVI, Section 40, of the Texas Constitution, which prohibits the holding of more than one office. The appointed municipal judge may hold more than one such office, provided the holding of the second office is “of benefit to the state” as required by Article XVI, Section 40. The opinion does not decide whether holding more than one municipal judgeship is “of benefit to the state.” After this opinion was rendered, the 75<sup>th</sup> Legislature amended Section 574.001 of the Government Code to provide that a person may hold the office of municipal judge for more than one municipality at the same time if each office is filled by appointment and the holding of these offices is considered to be of benefit to the state.

For more on the role of the judge, see Chapter 2 of this publication.

## 1. Qualification and Selection

Separate statutory authorization for the selection of municipal judges exists for home-rule cities and for general-law cities. Under home-rule, state law provides that the judge may be selected in the manner prescribed by the city charter.<sup>149</sup> The selection may be by election or by appointment.

General-law cities may provide by ordinance for the appointment or election of the municipal judge. The election of judges must be conducted in the same manner and for the same term as the mayor. If changing from the elective to the appointive method of selection, a new judge may not be appointed until after the incumbent’s term has expired. When the mayor serves as *ex officio* judge, there is no municipal judge. Rather, pursuant to Section 29.004(b) of the Government Code, the mayor exercises both the authority of mayor and judge without engaging in dual office holding. Specifically, Section 29.004(b) provides that a mayor in a general law city may serve in such a capacity as long as a city ordinance does not allow for either the election or appointment of a municipal judge.<sup>150</sup> If the municipality authorizes an election, the judge shall be elected for the same term as the mayor. If, however, the municipality authorizes the appointment, the mayor immediately ceases to function as *ex*

<sup>148</sup> Attorney General Opinion No. DM-428 (1996).

<sup>149</sup> Section 29.004(a), Government Code.

<sup>150</sup> This presumably includes alternate and associate municipal judges.

*officio* judge on the enactment of the ordinance. The first elected or appointed judge serves until the expiration of the mayor's term. While a few general law cities still utilize the law allowing the mayor to act as the *ex officio* judge, the constitutionality of Section 29.004(b) is disputable.<sup>151</sup>

## 2. Term of Office

A municipal judge's term of office is two years unless the municipality sets a term of four years.<sup>152</sup> If a municipal judge in a general-law city is temporarily unable to serve, the city may appoint a qualified person to sit temporarily for the regular judge. That person would temporarily have the same powers and duties of office and would be entitled to the same compensation as the regular judge.<sup>153</sup> The ordinance or special statute creating a municipal court of record establishes the term of office for judge. In home-rule and general-law cities, the city's governing body shall fill a vacancy for the remainder of the unexpired term.<sup>154</sup>

## 3. Removal

More than one court of appeals has held that a municipal judge is not an employee.<sup>155</sup> Accordingly, municipal judges may not be legally terminated in the same manner as an employee. As public officers, however, municipal judges may be removed from office. Grounds for removal may be located in the ordinance or special statute creating a court of record.<sup>156</sup> More than one intermediate court of appeals has held that in home-rule municipalities, judges may be removed pursuant to the terms of the city charter.<sup>157</sup> Generally, as a matter of law, municipal judges may be removed from office by the city's governing body 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.<sup>158</sup> The Commission on Judicial Conduct may also sanction a judge for improper behavior of the court's staff.

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<sup>151</sup> In *Tumey v. Ohio*, 273 U.S. 510, 523 (1927), the U.S. Supreme Court held that a mayor acting as a judge violated due process because he received a salary supplement for performing judicial duties that was funded from the fines assessed. Disqualification was required under the principle that “[e]very procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the State and the accused, denies the latter due process of law.” *Id.* at 532. Consider also *Ward v. Village of Monroeville*, 409 U.S. 57, 60 (1972), where a conviction in another mayor's court, even with the possibility of a trial *de novo*, was invalidated, even though the fines assessed went to the town's general fund, because the mayor faced a “possible temptation” created by his “executive responsibilities for village finances.”

<sup>152</sup> Article XI, Section 11, Texas Constitution; Section 29.005, Government Code.

<sup>153</sup> Section 29.006, Government Code.

<sup>154</sup> Section 29.011, Government Code.

<sup>155</sup> *Thompson v. City of Austin*, 979 S.W.2d 676, 681-684 (Tex. App.-Austin 1998); *City of Roman Forest v. Stockman*, 141 S.W.3d 805, 810 (Tex. App. Beaumont 2004).

<sup>156</sup> Section 30.000085, Government Code.

<sup>157</sup> *Willmann v. City of San Antonio*, 123 S.W.3d 469 (Tex. App.-San Antonio 2003); *Barnett v. City of Plainview*, 848 S.W.2d 339 (Tex. App.-Amarillo 1993); *Ratliff v. City of Wichita Falls*, 115 S.W.2d 1153 (Tex. Civ. App.-Amarillo 1938).

<sup>158</sup> Article V, Section 1-a, Texas Constitution.

#### 4. Duties and Responsibilities

The basic judicial duties and responsibilities of the municipal judge are generally set forth in a city ordinance, city charter, and the Code of Criminal Procedure. While an exact list would be difficult to assemble, the following duties apply to all Texas municipal judges:

For additional information on the Commission's function and proceedings, see Chapter 7 of this publication.

- Preside over jury and non-jury trials;
- Make evidentiary rulings during trial and pretrial hearings;
- Issue process (subpoenas, summonses, warrants, *capias*, *capias pro fines*, and attachments) to compel the attendance of persons as witnesses and parents of juveniles and to compel the appearance of defendants in municipal court;<sup>159</sup>
- Grant continuances in cases where sufficient cause is shown that a case should be postponed (The judge has discretion to approve or disapprove continuances in most instances.);<sup>160</sup>
- Keep and maintain a docket containing each case filed and court action taken;<sup>161</sup>
- Rule on motions for new trials;<sup>162</sup> and
- Prepare or assist in the reporting of all traffic convictions to the Texas Department of Public Safety.<sup>163</sup>

The judge generally relies heavily on the administrative support of the clerk, but may not delegate judicial duties to the clerk or allow the clerk to influence any judicial decisions. Where there is more than one judge in a municipality, one of the judges is generally designated to be 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 and assigning cases to the various courts, supervising the court support personnel, and performing a variety of other administrative functions.

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.<sup>164</sup> Thus, unless there is clear language in the statutes permitting the judge to delegate duties to the clerk, the judge may not do so. For example, the judge may not delegate authority or require the clerk to do the following: preside over trials and

<sup>159</sup> Article 45.014, Code of Criminal Procedure. See also, Articles 16.10, 16.11, and 24.01, Code of Criminal Procedure.

<sup>160</sup> Chapter 29, Code of Criminal Procedure.

<sup>161</sup> Article 45.017, Code of Criminal Procedure.

<sup>162</sup> Articles 45.037-45.040, Code of Criminal Procedure.

<sup>163</sup> Section 543.203, Transportation Code.

<sup>164</sup> *Newsom v. Adams*, 451 S.W.2d 948 (Tex. Civ. App.-Beaumont 1970), as cited in Attorney General Opinion No. H-386 (1974).

hearings; rule on motions; make rulings on the law; draft or present jury charges; decide verdicts or render judgments; set fines or bond amounts; forfeit bonds;<sup>165</sup> or issue warrants.<sup>166</sup>

The judge may not delegate to the clerk any action that the judge is statutorily bound to take or any action on a case 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: the judge must decide.

Individuals carrying out government functions may be held liable for certain actions that they might take pursuant to their jobs. In order for public officials to perform necessary tasks the law provides absolute immunity from liability for some official acts and qualified good faith immunity for others. The law generally requires that a judge perform the act in a judicial capacity before the judge is entitled to immunity. These protected judicial acts cannot generally be delegated. If they are improperly delegated to the clerk for example, the delegating officer (whether a judge or not) can be held liable.<sup>167</sup>

For additional information on judicial immunity, see Chapter 2 of this publication.

**B. Court Clerk**

The court clerk must fulfill all duties impartially and competently. Within the role of administratively assisting the court as a whole, the court clerk is responsible for seeing that the court’s papers are accurate, orderly, and complete. While the clerk’s duty is to serve all participants equally in the legal system, the clerk must remain independent of any particular participant. This means that the clerk must be as courteous and helpful to defense lawyers and defendants as to police officers and prosecutors. The clerk must never attempt to influence the outcome of any case.

Each participant has an equal right to know and understand the court’s procedures. The court clerk can have a tremendous impact on public perception. The clerk should provide participants with information on court procedures while avoiding giving legal advice.

The court clerk is responsible for and involved in the planning, scheduling, and coordinating of the clerical activities of the municipal court and performs a variety of functions fundamental to the overall administration of the court. 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 are important to the proper operation of the municipal court.

Unlike the municipal judge, many of the court clerk’s activities are not specifically provided for by statute. The clerk is required to “keep minutes of the proceedings of the court, issue process and

<sup>165</sup> Attorney General Opinion No. O-7104 (1946).  
<sup>166</sup> *Sharp v. State*, 677 S.W.2d 513 (Tex. Crim. App. 1984).  
<sup>167</sup> *Daniels v. Stovall*, 660 F. Supp. 301 (S.D. Tex. 1987).

generally perform the duties for the municipal court that a county clerk performs for the county court.”<sup>168</sup> City secretaries may serve as court clerk. If the judge is elected, the clerk is also elected unless an ordinance makes the city secretary the court clerk or, in home-rule cities, the charter provides for the appointment of the court clerk. The specific duties and responsibilities inherent in the office of the court clerk may be set out in the city charter or ordinances.

## **1. Qualification and Selection**

In general-law and home-rule cities, the court clerk is usually appointed by the city council. 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 by ordinance to appoint a deputy clerk. When a city elects the municipal judge, the clerk is elected in the same manner unless an ordinance designates the city secretary to serve as court clerk or in a home-rule city if the charter provides for the appointment of the court clerk.<sup>169</sup>

The city council may 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 cases processed, the size of the staff, how the workload is distributed, and whether the court’s work is done by computer or manually. Knowledge of court functions and procedures, advanced clerical skills, experience in dealing with the public, and basic knowledge of accounting or bookkeeping are most desirable. Where courts have automated court records, clerks may also be required to possess data processing skills and management techniques.

## **2. Term of Office**

The term of office for municipal court clerk is two years unless the city provides a term of four years.<sup>170</sup> When the city secretary serves as court clerk, then the court clerk’s term runs concurrently with the city secretary’s term.

The court clerk may be removed from office for the same reasons as other city officials. Cities should specify grounds and procedures for removal. 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.<sup>171</sup> 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.<sup>172</sup> Of course, the governing body of the municipality should exercise care in removing a judge or clerk from office and

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<sup>168</sup> Section 29.010(c), Government Code.

<sup>169</sup> Section 29.010(a) and (d), Government Code.

<sup>170</sup> Article XI, Section 11, Texas Constitution; Section 29.010(b), Government Code.

<sup>171</sup> Section 22.077(a), Local Government Code.

<sup>172</sup> Section 22.077(b), Local Government Code.

consider Sections 29.005 and 29.010 in the Government Code which provide terms of office for both the judge and clerk. Municipal courts of record may have statutes that prohibit removal of a municipal judge by the city council.<sup>173</sup> Accordingly, specific statutes would need to be consulted.

If the office of court clerk, like that of municipal judge, is vacated, regardless of the reason for the vacancy, the city's governing body shall appoint a replacement for the remainder of the unexpired term.<sup>174</sup>

### **3. Duties and Responsibilities**

The judge is generally responsible for administering the operations of the municipal court. The court clerk is generally responsible for implementing the policies the judge establishes and for administering court policy and procedures. Clerks and judges should not assume each other's duties. There is a clear separation of judicial and administrative functions that should be clearly understood by both officers.

State law provides that the municipal court clerk shall keep the minutes of court proceedings, issue all process, and generally perform comparable duties of the county clerk in county court.<sup>175</sup> Home-rule cities may prescribe other duties of the clerk by charter or ordinance.

The basic duties of the court clerk include the following:

- Administering oaths to persons filing complaints before the court;<sup>176</sup>
- Processing traffic citations, parking citations, and all other complaints;
- Preparing court process as directed by the judge;
- Transmitting fines and pleas received to the municipal judge for acceptance and entering of judgment;
- Receiving appearance bonds from persons charged with offenses in municipal court;
- Maintaining accurate records for the court including: (1) the docket and minutes of the court proceedings;<sup>177</sup> and (2) a fee book and receipt book showing the fines and fees collected in each case;
- Scheduling cases for a hearing according to court policy;

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<sup>173</sup> Chapter 30, Government Code.

<sup>174</sup> Section 29.011, Government Code.

<sup>175</sup> Section 29.010(c), Government Code.

<sup>176</sup> Article 45.019(e), Code of Criminal Procedure.

<sup>177</sup> Article 33.07, Code of Criminal Procedure (Courts of Record); Article 45.017, Code of Criminal Procedure.

- Preparing dockets of cases filed with the court and a subsidiary docket of cases which require action each day;
- Notifying defendants and jurors of court appearances and the penalties for failure to appear unless appearance has been waived by the court;
- Preparing subpoenas and attachments for witnesses;<sup>178</sup>
- Preparing summons, arrest warrants, and other process at the direction of the judge;
- Explaining to defendants the procedures in municipal court;
- Delivering all case documents, including the appeal bond and a transcript of the court proceedings, to the county court upon appeal of a case;<sup>179</sup>
- Reporting traffic convictions to the Texas Department of Public Safety;<sup>180</sup>
- Compiling statistical reports for the judge including reports to the city administration, the Texas Judicial Council/Office of Court Administration, the State Comptroller, the Department of Public Safety, and others;
- Preparing other financial reports for the judge and submitting copies to the city's financial officer and auditor and to the State Comptroller;
- Managing data processing of court records if court records are processed by automation or by whatever means are authorized, if not automated; and
- Performing other non-judicial duties as may be delegated by the judge.

For a more extensive description of the clerk's duties and the contrast between judicial and ministerial duties, see the TMCEC study guide entitled *Authority and Duties*.

### C. Prosecutor

Though many lawyers across the state exclusively prosecute, for the most part, Texas law does not acknowledge "prosecutor" as a category of governmental attorney. Rather, prosecution is generally a duty of certain attorneys who represent the State of Texas in criminal proceedings. In criminal law, the State of Texas includes government at the state and local level. Pursuant to the Texas Constitution such attorneys include district and county attorneys. The authority of other governmental attorneys to represent the State is created by statute. Such attorneys include the State Prosecuting Attorney, and attorneys who prosecute in municipal court. Attorneys who are authorized to represent the State of Texas in municipal court are generally limited to the following:

<sup>178</sup> Articles 24.03 and 24.11, Code of Criminal Procedure.

<sup>179</sup> Article 44.18, Code of Criminal Procedure.

<sup>180</sup> Section 543.206, Transportation Code.

- City Attorneys (Article 45.201, Code of Criminal Procedure - in non-record municipal courts) and (Section 30.490, Government Code - in municipal courts of record)
- Deputy City Attorneys (Article 45.201, Code of Criminal Procedure)
- Assistant City Attorneys (in municipal courts of record) (Section 30.490, Government Code)
- County Attorneys (without compensation) (Article 45.201, Code of Criminal Procedure)<sup>181</sup>
- Criminal District Attorneys (without compensation) (Art. V. Sec. 21, Texas Constitution)
- Attorneys Pro Tem (Article 2.01, Code of Criminal Procedure)

In comparison to state and county government, municipal government has a much more flexible and fluid organizational structure. The nature of city government has in the past caused confusion about the role of municipal courts in state judicial system. Similar dilemmas have surrounded the position of city attorney, specifically the city attorney's duties in municipal court.

While state law imposes no duties on city attorneys as it relates to civil matters, that is not true when it comes to criminal cases in municipal court. As the Court of Criminal Appeals stated, "[t]he responsibility and authority in municipal prosecutions is clear: In the municipal court the city attorney has the right and duty to prosecute, and the county attorney has the right, but not a duty to prosecute."<sup>182</sup>

Unlike in county and state government, a municipality depending on its population and rules of local governance (by charter and/or ordinance), may have one or more city attorney. Alternatively, a city may have no city attorney. Cities may, but are not required to, have an elected or appointed city attorney, but cities that opt to have a municipal court are required by state law to have an attorney who is legally authorized to prosecute. Such attorneys, depending on the municipality, may be "in-house," solo practitioners, or employed by a law firm. Depending on the volume of complaints filed in a municipal court, prosecution may entail some or all of an attorney's time.

Bearing the moniker "city attorney" (in its various forms) entails the duty to prosecute in municipal court. This duty is a noted exception to the general rule that state law does not impose such "civil duties" on city attorneys. Because municipal law involves a very broad cross-section of the law, and because a municipal attorney's practice may focus on other specific areas of law that do not entail criminal law, not all municipal attorneys are familiar with the specific procedural and substantive law issues that are essential to prosecuting in municipal court.

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<sup>181</sup> *Harris County v. Stewart*, 41 S.W. 650 (Tex. 1897); *Howth v. Greer*, 552 S.W. 211 (Tex. Civ. App. 1905).

<sup>182</sup> *Aguirre v. State*, 22 S.W.3d 463, 469 (Tex.Crim.App. 1999).

It should be emphasized that Article 45.201 only requires an attorney representing the State to be present to conduct “prosecutions” at bench or jury trials.<sup>183</sup> Thus, prosecutors are not required to be present when a defendant makes an appearance to enter a plea.

While defendants have a constitutional right to represent themselves, a significant amount of Texas case law provides that an attorney must represent nonhuman entities (*e.g.*, governments, corporations, and associations). Furthermore, Section 81.102 of the Government Code requires that persons practicing law be licensed by the Supreme Court of Texas and in good standing with the State Bar of Texas. Accordingly, while peace officers can be called as witnesses to testify, they cannot act as prosecutors presenting the State’s case.

Chapter 45 of the Code of Criminal Procedure makes no distinction between the largest and smallest municipal courts. Just as all municipal courts are required to have judges, they are also required to have prosecutors at trial. What may a judge do if no prosecutor is present to represent the State at trial? There are three options:

1. postpone the trial to a date certain;
2. appoint an attorney *pro tem* as provided in Article 2.07 of Code of Criminal Procedure (Used in conjunction with the postponement option, the appointment of an attorney *pro tem* may be a viable option for smaller courts who rarely hold trials.); or
3. proceed to trial. (Presumably, this option triggers Article 45.032 that states if upon a trial the State fails to prove a *prima facie* case of the offense alleged in the complaint, the defendant is entitled to a directed verdict of ‘not guilty’.)

Because prosecutors, not judges, decide which complaints are filed in court, only the prosecutors should advise and direct peace officers in preparing criminal cases. The prosecutor’s role is to seek justice, to screen out or to ask for dismissal of cases where there is insufficient evidence or evidence wrongfully gathered and to seek convictions fairly and only of the guilty. In the broad view, the prosecutor represents the public’s interest in enforcing the criminal law strictly but fairly. The prosecutor also has a duty to maintain public respect for the judicial system.

Article 45.201(c) states “with the consent of the county attorney, appeals from municipal court, county court, county court-at-law, or any appellate court may be prosecuted by the city attorney or deputy city attorney.”<sup>184</sup> When there is no county attorney, but rather a criminal district attorney, similar consent may be given by the criminal district attorney.<sup>185</sup>

While Article 45.201(c) is readily accepted as being applicable to instances where a defendant opts to appeal, its application to instances where the prosecution is appealing a pre-trial ruling of the municipal

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<sup>183</sup> Attorney General Opinion No. GA-067 (2003).

<sup>184</sup> Article 45.201(c), Code of Criminal Procedure.

<sup>185</sup> *Thornton v. State*, 778 S.W.2d 149 (Tex.App.-Eastland 1989).

court has not always been clear.<sup>186</sup> Pre-trial appeals can occur where the attorney representing the State believes that the trial judge improperly (1) dismisses a case, (2) arrests or modifies a judgment, (3) grants a new trial, (4) sustains a claim of double jeopardy, or (5) suppresses evidence.<sup>187</sup> Attorneys prosecuting pre-trial appeals from a municipal court are strongly advised to familiarize themselves with the intricacies of Article 44.01 of the Code of Criminal Procedure and all pertinent case law.

Much of the case law having to do with the State's right to appeal has to do with the validity of the notice of appeal and who has the authority to initiate such an appeal. For a notice of appeal to be valid, the appropriate prosecuting official must "make the appeal by personally authorizing in some fashion the specific notice of appeal in question" prior to the expiration of the deadline for perfecting an appeal.<sup>188</sup> Per Article 44.01(i), for purposes of the state's right to appeal, "prosecuting attorney" means the county attorney, district attorney, or criminal district attorney who has the primary responsibility for prosecuting cases in the court hearing the case and not assistant prosecuting attorney. However, as the Court of Criminal Appeals explained in *State v. Blankenship* (a case involving a conviction in a municipal court of record, where the judgment was reversed by the county court, and the city attorney sought to appeal to the court of appeals), the personal signature of the prosecuting attorney is not necessarily required so long as the prosecutor personally authorizes in some fashion the specific notice of appeal.<sup>189</sup>

## 1. Term of Office

The city attorney's term, subject to conditions regarding removal, may be set by ordinance or charter or by the agreement for employment. Assistant city attorneys serving as prosecutors work at the pleasure and discretion of the city attorney. While most intermediate and larger municipalities have "in-house" city attorney offices, law firms, and solo practitioners represent most Texas cities. Typically, in such circumstances, the city contracts for specified services and duration of services. Such variations make it hard to generalize about who specifically prosecutes in Texas municipal courts.

## 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 basically the same role as the prosecuting attorney in other

<sup>186</sup> While *Boseman v. State*, 830 S.W.2d 588 (Tex.Crim.App. 2002) implicitly questioned whether the prosecution, with the consent of the county attorney, could even pursue an Article 44.01 appeal from a non-record court, a more recent case, *State v. Alley*, 158 S.W.3d 485 (Tex. Crim. App. 2005), held that such an appeal can originate from a non-record court and are to be considered by the county level court, not the court of appeals. Furthermore, the Court of Criminal Appeals held that Article 44.01 must be read in conjunction with the consent provision of Article 45.201(c). *State v. Blankenship*, 146 S.W.3d 218 (Tex. Crim. App. 2004). Accordingly a city attorney may prosecute such appeals with the consent of the county attorney.

<sup>187</sup> Article 44.01, Code of Criminal Procedure.

<sup>188</sup> *State v. Muller*, 829 S.W.2d 805 (Tex.Crim.App. 2002).

<sup>189</sup> 146 S.W.3d 218 (Tex. Crim. App. 2004). A timely-made assertion in amended notice of appeal that county attorney consented to city attorney prosecuting appeal qualified as personal authorization.

criminal trial courts. However, in municipal courts with larger dockets, the prosecutor's time for case preparation and consultation with police officers, witnesses, and complainants is usually much more limited than in other trial courts.

Judges should be mindful that prosecutors have discretion over which cases to prosecute and trial strategy. Prosecutors, however, should be mindful that they cannot dismiss charges or cases except upon written grounds and with the judge's approval.<sup>190</sup> It is the primary duty of a municipal prosecutor not to ensure convictions, but to see that justice is done.<sup>191</sup>

Duties of the city prosecutor are as follows:

- Investigating the facts surrounding alleged offenses and deciding whether or not to file charges;
- Preparing and drafting complaints (The court clerk may assist the prosecutor in preparing routine complaints. However, ultimate responsibility for the legal sufficiency and accuracy of complaints is the prosecutor's.);
- Administering oaths to persons filing complaints before the court;<sup>192</sup>
- Preparing and presenting the State's case at trial;
- Arranging for the appearance of 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, as well as answering legal questions; and
- Negotiating with either the defendant or defense lawyer.

#### **D. Bailiff**

There is no general statute governing the designation of bailiff in various Texas courts.<sup>193</sup> Accordingly, it is very difficult to generalize about who is designated to serve as bailiff in municipal court. It is equally difficult to generalize about who supervises the bailiff. In some cities, the court administrator is responsible for selecting and supervising the bailiff. In some cities, the judge may appoint the bailiff. In the larger cities with more than one court, the presiding judge usually appoints the bailiffs. When the bailiff is appointed by the judge, it is not required that the bailiff be a peace officer. While state law authorizes local governments to collect a designated fee for providing court security, the law does not

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<sup>190</sup> Articles 45.201 and 32.02, Code of Criminal Procedure.

<sup>191</sup> Article 45.201(d), Code of Criminal Procedure.

<sup>192</sup> Article 45.019(e), Code of Criminal Procedure.

<sup>193</sup> See, generally, David B. Brooks, 36 *Texas Practice: County and Special District Law* Section 22.24 (2002).

allow local governing body to establish a force of licensed peace officers solely for the purpose of providing court security.<sup>194</sup> This does not mean, however, that either select peace officers or local law enforcement agencies are not commonly involved in providing both security and bailiff functions in Texas municipal courts. Many bailiffs who are peace officer are also employed as police officers, city marshals, sheriff's deputies, or as a deputy constable.

In 1990, the Texas Attorney General was asked about the authority of a municipality to establish a warrant division under the direction of the municipal court. The Attorney General opined that while his office could “find no express authority for utilization of a bailiff in a municipal court of record; we believe that the court has inherent authority to request the warrant officer to serve in such capacity. Volume 20 of *American Jurisprudence 2d Courts*, Section 4, discusses positions that are considered as an inherent part of a court. It is noted that while a clerk may not always be considered an inherent part of the court certain inferior officials, including a bailiff, are considered necessary in the proper administration of justice. Although the exact limit of the powers of judges as to appointments is not entirely settled, ‘a long continued and rarely challenged practice has in fact confided to them the appointment of many officers of inferior grades . . . .’ Included in this group are bailiffs. We perceive no reason why the warrant officer may not serve in such capacity.”<sup>195</sup>

## **1. Qualification**

While there are no state statutory qualifications for serving as a bailiff in municipal court, minimum qualifications 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.

## **2. Duties and Responsibilities**

The bailiff is typically responsible for maintaining order, security, and decorum while the court is in session. By announcing “All rise,” bailiffs generally announce when court is in and out of session. They may be assigned other duties including maintaining custody of those convicted until payment or arrangements are finalized with the clerk. Bailiffs may also administer oaths to witnesses if directed and authorized by the judge; attend to the jury; keep the jury together and separate from all other citizens during deliberations; carry written communications between the jury and judge; and inform the judge when a verdict has been reached.

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<sup>194</sup> Attorney General Opinion No. JC-0476 (2002).

<sup>195</sup> Attorney General Opinion No. JM-1222 (1990).

## E. Warrant Officer

While the term “warrant officer” is more commonly associated with the military, the term has unique meaning in Texas law enforcement.<sup>196</sup> While Texas cities have not always agreed on the duties of a warrant officer, warrant officers have long played an integral role in the operation of municipal courts. In the City of Houston, for example, in the 1930s, the warrant officer had the following duties: “execute all warrants, writs, processes or summons issued from the Corporation Court, and shall assist the clerk of the Corporation Court whenever called upon so to do in the performance of his duties, and shall be ex officio deputy of such clerk of the Corporation Court.”<sup>197</sup>

Today, the primary role of the warrant officer is to serve all process or papers issued by the municipal court. In small and medium-sized cities, this function is usually conducted by the police department and sometimes by those 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 Officer Standards and Education (TCLEOSE).<sup>198</sup>

The Code of Criminal Procedure provides that all process (any means used by a court to exercise jurisdiction over a defendant) 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 court.<sup>199</sup> Failure, neglect, or refusal to serve process may make the responsible officer liable for a fine of \$10-\$200 for contempt of court.<sup>200</sup> To serve process means to deliver a writ or summons to the party to whom it is addressed.

## F. 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

For a more complete discussion of the right to counsel, see Chapter 4 of this publication.

<sup>196</sup> “Warrant officer” is but one of many categories of police officer included in a Houston city ordinance that became the subject of a Texas Supreme Court decision in 1937 “The Police Department shall consist of Superintendent of Police, Inspector of Police, Captain of Police, Lieutenant of Police, Chief of Detectives, Captain of Humane Officers, Captain of Traffic Division, Clerk of Corporation Court, performing all the duties of Police Clerk, Assistant Clerk of Corporation Court, Secretary, Bertillon Operator and Custodian of Lost and Stolen Property, Clerk of Identification Bureau, Clerk of Detective Office, Warrant Officers, Sergeants, Turnkeys, Corporals, or Roundsmen, Motorcycle Officers, Detectives, Humane Officers, Traffic Officers, mounted or otherwise, Mounted Police Officers, Patrolmen, Watchmen, Juvenile Officers, Chauffeurs, Station Reserves and Short Calls, Building Superintendent; and the Offices above mentioned are hereby created, and as many persons shall be appointed to such offices by the Mayor and City Council from time to time, as in their judgment are necessary for the proper conduct and operation of the Police Department.” *Holcombe v. Grotz*, 129 Tex. 100, 104 (Tex. 1937).

<sup>197</sup> *Id.*

<sup>198</sup> Chapter 415, Government Code.

<sup>199</sup> Article 45.202, Code of Criminal Procedure.

<sup>200</sup> Article 2.16, Code of Criminal Procedure.

their rights respected and to be treated fairly. Even where the verdict is guilty, defense counsel has a duty to argue for fair punishment.

## VII. Court Decorum

*Justice does not depend upon legal dialectics so much as upon the atmosphere of the courtroom, and that in the end depends primarily upon the judge.*<sup>201</sup>

– Judge Learned Hand

All judges are guardians of the inherent dignity the public has historically associated with courts.<sup>202</sup> Described as “hallowed places of quiet dignity,”<sup>203</sup> American courts not only serve as forums for adjudicating alleged wrongdoing, they embody the important appearance of authority, vital to preserving the public’s perception of an orderly society.

Despite relaxed social norms for behavior and general de-emphasis on formality throughout society, the U.S. Supreme Court has consistently emphasized that protecting the dignity of the courts and preserving public perception require all judges to remain vigilant in maintaining court decorum.<sup>204</sup> Preservation efforts begin in municipal court.

Ethically, all Texas judges are required to “maintain order and decorum in proceedings before the court.”<sup>205</sup> All Texas courts are legally required to conduct proceedings with dignity and in an orderly and expeditious manner, assuring that justice is done.<sup>206</sup> In complying with the objectives of the Code of Criminal Procedure, municipal and justice courts are specifically required to “ensure appropriate dignity in court procedure without undue formalism.”<sup>207</sup>

While the Code of Judicial Conduct describes what is generally required of Texas judges, the Code of Criminal Procedure’s requirement for municipal judges is more nebulous. What is “appropriate dignity in court procedure”? What constitutes “undue formalism”? The law provides little guidance. Consequently, the task of finding a balance between “appropriate dignity” and “undue formalism” belongs to each municipal judge.

Have most municipal judges considered, let alone achieved, such a balance? In recent years, Texas municipal courts have been criticized for the informality of their proceedings (*e.g.*, judges seldom wear

<sup>201</sup> *Brown v. Walter*, 62 F.2d 798, 800 (1933).

<sup>202</sup> *Illinois v. Allen*, 397 U.S. 337 (1970) (Douglas, J., dissenting).

<sup>203</sup> *Mayberry v. Pennsylvania*, 400 U.S. 455, 456 (1971).

<sup>204</sup> *J.E.B. v. Alabama ex rel. T.B.*, 114 S. Ct. 1419, 1438 n.3 (1994) (Scalia, J., dissenting) (asserting that appearance of justice is equally important as actual justice); *Illinois v. Allen*, 397 U.S. 337, 343 (1970) (declaring that dignity, order, and decorum are necessary for success of criminal justice system).

<sup>205</sup> Texas Code of Judicial Conduct, Canon 3(B)(3).

<sup>206</sup> Section 21.001(b), Government Code.

<sup>207</sup> Article 45.001(3), Code of Criminal Procedure.

robes, patrons do not have to rise when the judge enters the room, bailiffs participate in the taking of pleas).<sup>208</sup> While such criticisms are often presumed to describe courts in smaller municipalities (who have fewer resources), metropolitan municipal courts are not immune from such criticism.<sup>209</sup>

There are sufficient reasons to believe that efforts are necessary to improve perception of municipal courts.<sup>210</sup> Institutional research conducted by the Texas Municipal Courts Education Center suggests that municipal judges sometimes neglect court decorum for a variety of reasons. The most common reason for lax court decorum is a general failure to appreciate its importance. Other reasons include a lack of resources, lack of official support, and official discouragement.

Court decorum is not about the vanity of the individual judge or sovereign authority. Rather, court decorum is a utility that creates an optimal climate for the administration of justice. Changes in municipal courts begin at home beginning with the judge. Thus, not only must municipal judges be aware of the importance of court decorum, city officials must also appreciate its importance as a vital component in the administration of justice. The appearance of a citizen before a municipal court is a rare opportunity for the citizen to gain insight into the quality of city government and its elected leaders. Accordingly, ensuring positive public perception requires each city to implement necessary changes in their municipal courts. Many municipal judges inherit chambers and courtrooms that leave much to be desired, while 26 percent of municipal judges inherit no courtroom at all.<sup>211</sup> While some issues, such as posting and enforcing rules of decorum, can be implemented by the judge alone, the administration of justice necessitates a commitment from city council, city managers, and mayors. While cities should budget adequate funds for municipal court operations, city councils dedicated to improving their municipal courts are statutorily authorized to earmark 10 percent of time payment revenue for the specific purpose of insuring the efficient administration of justice.<sup>212</sup> The law specifically requires municipalities to prioritize the needs of the municipal judge who collected the fee in making such expenditures.

In assessing how a courtroom or other facility serving as a courtroom functions, consider the following criteria:<sup>213</sup>

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<sup>208</sup> Horton & Turner, *Lone Star Justice: A Comprehensive Overview of the Texas Criminal Justice System*, Austin: Eakin Press (1999) at 166.

<sup>209</sup> Cities with large dockets have been described as distributors of “assembly-line justice.” Scholars studying such courts conclude that emphasizing the number of cases processed potentially sacrifices procedural and substantive rights, as well as court decorum. Critics have gone as far as describing such municipal courts as “hurricanes of humanity” where the “process is the punishment.” See generally, David W. Neubauer, *America’s Courts and the Criminal Justice System 6<sup>th</sup> Edition* (West 1999) at 470-475.

<sup>210</sup> *The Courts and the Legal Profession in Texas – The Insider’s Perspective: A Survey of Judges, Court Personnel and Attorneys*, Alexandria, Virginia: State Justice Institute (1998) (suggesting that municipal courts rank last in overall impression among judge and court personnel and second to last among lawyers).

<sup>211</sup> See generally, TMCEC *Municipal Court Recorder* Vol. 11, No. 8 (August 2002).

<sup>212</sup> Section 133.103, Local Government Code.

<sup>213</sup> National Conference of State Trial Judges, *The Judge’s Book*, Chicago: American Bar Association (1989) at 10.

- **Function and Organization** – In addition to a judge’s bench, at a minimum, courtroom facilities should be of adequate size to accommodate a jury box (a designated areas capable of seating six jury panel member), a witness stand (a designated seat for witnesses when called to testify), designated places for court personnel (court clerk and/or court reporter, bailiff), a gallery (all Texas courts and trial proceedings are required to be open to the public), and designated places for the prosecutor and defendant (separate tables facing the bench for both the defendant and prosecutor). Ideally, a courtroom also contains a jury room (a room separate from the court that can be used during jury deliberation and recess). In laying out a courtroom, municipalities should be mindful that all courts are required under federal and state law to be accessible to people with disabilities.
- **Symbolic Values** – The interior of a municipal courtroom should reflect the cultural and social values of the city, state, and nation. The fixtures of the courtroom should announce to all who enter it the importance of the administration of justice. The room should be organized to psychologically differentiate it from other governmental workspaces. This can be achieved through the prominent display of the seals of the city and state and the display of the state and national flags. The gavel and the robe are the two symbols most frequently associated with the courts. Despite the importance of such symbols, a survey conducted by the Texas Municipal Courts Education Center concluded that only 58 percent of municipal judges wear robes. Judges who do not wear robes ignore research that concludes that the robe is an important symbol of judicial authority that evidences the judge’s commitment to impartiality. Additionally, the robe establishes the formality of the court and gives the court credibility (*i.e.*, if you don’t dress like a judge you are less likely to be treated like a judge). Finally, in rural courts, where the judge may be known as a friend or neighbor, the robe eliminates the familiarity that potentially hinders the administration of justice.<sup>214</sup>
- **Environmental Factors** – A well-functioning courtroom should also meet more pragmatic criteria. Facilities should have adequate lighting, air-conditioning, and heating. Additionally, to ensure that all people present can hear the proceeding, the court should be equipped with audio amplification equipment.
- **Construction, Materials, and Furnishings** – The quality of construction and décor directly affect the durability of a courtroom. From a management perspective, the appearance of the courtroom directly impacts morale. Simply stated, quality environments encourage quality performance.<sup>215</sup>
- **Security** – Because violent outbursts are occurring more frequently in the courtroom, judges and city officials should take appropriate measures to protect both court personnel and members of the public. Depending on the volume of cases adjudicated by the court, expenditures pertaining to court security can be supplemented (or altogether covered) by adoption of an ordinance creating a municipal court

For additional information and data on court decorum in Texas municipal courts, see TMCEC *Municipal Court Recorder* Vol. 11, No. 8 (August 2002).

<sup>214</sup> Felix F. Stumpf, *Bench Trial Skills and Demeanor: An Interactive Manual For New Nonlawyer Judges*, Reno, Nevada: The National Judicial College (1995).

<sup>215</sup> See, generally, Burns, *Designing the Good Courtroom*, Popular Government (Fall 1984).

building security fund.<sup>216</sup> The statute governing the security fund contains a detailed list of physical items and services that may be purchased to improve court security. Most municipalities have opted to create the municipal court building security fund because defendants, rather than taxpayers, bare the additional court cost. Expenditures alone do not, however, ensure security. Protecting patrons and avoiding civil liability require municipalities to develop, implement, and monitor security plans. Related consulting costs can also be offset by municipal court building security fund revenue.

## **VIII. Contacts**

There is interaction and cooperation between the municipal court and various state agencies and professional organizations where duties overlap and interface. Some of those agencies are profiled here.

### **A. Attorney General's Office**

The Attorney General created a Municipal Affairs Division in 1992 to work with cities to address issues and resolve problems. The staff is available to discuss municipal issues with court staff members. The telephone number is 512.475.4683, and the internet address is [www.oag.state.tx.us](http://www.oag.state.tx.us).

The Attorney General's Office publishes legal opinions interpreting and applying various provisions of the law. Every year a number of such opinions directly pertain to municipal court subject matter or procedure. Assistance or copies of opinions may be obtained at P.O. Box 12548, Austin, Texas 78711-2548 or by calling 512.463.2110.

The Attorney General's Office administers the Crime Victims' Compensation Fund that provides benefits to crime victims. For additional information, call 800.983.9933. Municipal courts are excellent local sites for dissemination of information on crime victims.

### **B. State Comptroller's Office**

The State Comptroller's Office is ultimately responsible for the collection of court costs and for their final distribution. They receive municipal court's quarterly reports. The Comptroller has staff that are available to assist municipal courts and to answer questions about collecting and reporting state court costs on criminal convictions. You may call the Local Government Assistance Division of the Comptroller's Office toll-free at 800.531.5441, ext. 34679 for quarterly report information or state court costs information. Their internet address is [www.window.state.tx.us/lga/](http://www.window.state.tx.us/lga/).

### **C. State Bar of Texas**

The State Bar of Texas, an administrative agency of the Texas Supreme Court, is charged with many responsibilities, including providing educational programs for legal professionals and the public,

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<sup>216</sup> Article 102.017, Code of Criminal Procedure.

administering the mandatory continuing education program for attorneys, and managing the attorney grievance procedure.

For additional information or to learn about the grievance process against attorneys, call 800.204.2222 or 512.463.1463. The mailing address is P.O. Box 12487, Austin, Texas 78711. The State Bar sponsors a peer assistance program for lawyers with alcohol and drug abuse problems. To refer a lawyer, contact 800.343.8527. The State Bar’s website can be found at [www.texasbar.com](http://www.texasbar.com).

**D. State Commission on Judicial Conduct**

The State Commission on Judicial Conduct is designated to investigate and resolve complaints filed against judges. It is helpful to note that the Commission staff attorneys may be able to assist judges and clerks in working through some of the difficult ethical situations and issues they encounter. The Commission also sponsors a peer assistance program for judges troubled by substance abuse. Contact the Commission at P.O. Box 12265, Austin, Texas 78711-2265 or at 877.228.5750. The Commission’s website is available at [www.scjc.state.tx.us](http://www.scjc.state.tx.us).

**E. Texas Court Clerks Association**

The Texas Court Clerks Association (TCCA) is a non-profit organization established to increase the proficiency of judicial administrators and clerical personnel through education and networking. The Association offers an annual meeting, regional seminars offered by its local chapters, and a legislative program.

The TCCA is an affiliate of the Texas Municipal League. It is the sponsor of the Municipal Court Clerks Certification Program in cooperation with the Texas Municipal Courts Education Center. The Association’s internet address is [www.texascourtclerks.org](http://www.texascourtclerks.org).

**F. Texas Department of Public Safety**

The Transportation Code requires municipal courts to report all traffic convictions or bond forfeitures in traffic cases to the Texas Department of Public Safety (DPS).<sup>217</sup> This report should be submitted in a form acceptable to DPS. These may include DPS form DL-18, computer records, or copies of citations with disposition information attached. Any form of report that is acceptable to DPS is a sufficient report.

Through the Nonresident Violator Compact (NVC), compliance with traffic laws may be enforced even when citations are issued to motorists who live outside Texas. The police, municipal and justice courts, and DPS must cooperate to enforce the NVC. DPS is the Texas “licensing agency” responsible for receiving reports from local authorities on failure of out-of-state motorists to comply with the terms of traffic citations.

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<sup>217</sup> Section 543.203, Transportation Code.

The Department of Public Safety also provides and maintains statewide driving records. Such information may be helpful to the courts in assessing punishment or prescribing rehabilitative techniques for defendants. The Department of Public Safety may also be helpful in determining ownership of out-of-county vehicles for parking violations.

Cities may contract with DPS to deny renewal of the driver's license of a person who has failed to appear in court or who has failed to pay a fine. To request a contract, call DPS at 512.424.5974. For information on reporting call DPS at 512.424.2028. DPS forms can be obtained through their internet website: [www.txdps.state.tx.us](http://www.txdps.state.tx.us).

**G. Texas Judicial Council/Office of Court Administration**

All Texas courts are required to report various statistical data to the Texas Judicial Council on a monthly basis. To assist in this data gathering, the Judicial Council has distributed reporting questionnaires and monthly report forms. The data collected is published in an annual report. The report may be obtained by contacting the Texas Judicial Council, Office of Court Administration, P.O. Box 12066, Austin, Texas 78711 or at 512.463.1625. The internet address for the Office of Court Administration is [www.courts.state.tx.us/oca/](http://www.courts.state.tx.us/oca/).

**H. Texas Municipal Courts Association**

Texas Municipal Courts Association (TMCA) is 501(c)(4) non-profit association of municipal judges and court support personnel. The Association also hosts an annual meeting, an annual awards program for outstanding judges and clerks, and an active legislative program. The Board of Directors of TMCA also serves as the Board of Directors for the TMCEC. The TMCA website is [www.txmca.com](http://www.txmca.com).

**I. Texas Municipal Courts Education Center**

The Texas Municipal Courts Education Center (TMCEC) was formed in 1984 by the Texas Municipal Courts Association (TMCA) to provide extensive, regular education and training programs for municipal judges and court support personnel. TMCEC is financed by a grant from the Court of Criminal Appeals out of funds appropriated by the Legislature to the Judicial and Court Personnel Training Fund. In 2006, TMCEC was incorporated as 501(c)(3) non-profit corporation exclusively for charitable, literary, and educational purposes of providing: (1) judicial education, technical assistance, and the necessary resource material to assist municipal judges, court support personnel, and city attorneys in obtaining and maintaining professional competence in the fair and impartial administration of criminal justice; and (2) information to the public about the Texas judicial system and laws relating to public safety and quality of life in Texas communities.

TMCEC conducts courses in various locations throughout the state to facilitate compliance by municipal judges with the Court of Criminal Appeals' order mandating continuing education on an annual basis. Courses are offered for judges, clerks, court administrators, bailiffs, warrant officers, and prosecutors. At this time, annual attendance at judicial education programs is not mandatory for court

clerks, but is highly recommended. Specific course locations and dates may be obtained by writing or calling the Center. TMCEC staff attorneys are available to judges and court personnel to answer questions about municipal court procedures. The mailing address is 1609 Shoal Creek Blvd., Suite 302, Austin, Texas 78701. Contact TMCEC at 800.252.3718. The TMCEC publishes *The Recorder: The Official Journal of Municipal Court* and has an extensive collection of other resources that are available online. TMCEC's internet address is [www.tmcec.com](http://www.tmcec.com).

## **J. Texas Municipal League**

The Texas Municipal League (TML) provides a variety of services to municipalities. The League's legal staff also provides assistance to courts. The League monitors legislation proposed and passed by the Legislature to assure that the interests of municipalities are represented. Contact the Texas Municipal League at 1821 Rutherford Lane, Suite 400, Austin, Texas 78754-5128 or at 512.231.7400. The League's internet address is [www.tml.org](http://www.tml.org).

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