

# MUNICIPAL COURT: BEST PRACTICES

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## COMES DOWN TO THREE BASIC CONCEPTS:



ETHICAL DUTY AS A  
PROSECUTOR



RESPONSIBILITY TO BE  
PREPARED FOR EVERY CASE



PROFESSIONAL DUTY IN THE  
COURTROOM

## ETHICAL DUTY TO PROVIDE DISCOVERY AND OTHER MATERIALS

- *Brady v. Maryland*, 373 U.S. 83 (1963) (see TDCAA Brady Training Online!)
  - 1963 decision to disclose exculpatory and mitigating evidence and information, which is favorable to the defense and is material in the sense that, if it had been timely disclosed to the defense, there is a reasonable probability that the result of the proceeding would have been different
  - “Reasonable probability” doesn’t mean “more likely than not”—it just means the defendant didn’t receive a fair trial
  - If the State fails to disclose this evidence which would have been admissible in trial, (or even inadmissible!) it is a *Brady* violation
- Morton (CCP Art. 39.14)
  - Prosecutor’s statutory duty to disclose favorable evidence and information
- ABA Model Rule 3.8: Special Responsibilities of a Prosecutor
  - (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal*

**ETHICAL DUTY  
REGARDING YOUR  
HIRED/APPOINTED  
POSITION AND  
KNOWING WHO  
YOUR CLIENT IS**

- We work for cities—know your cities’ priorities—they may differ depending on the population, goals, political climate
- We took the oath to ensure that justice is done, the minute we became a prosecutor (CCP Art. 45.201(d))
- When those conflict, sometimes it is your Bar license v. your job—personal decision of which is more important
  - “Why do we have to give them all of our records/files/emails/DVDs?”
  - “Why do we have to follow the OCA’s orders regarding in-person jury trials?”
  - “Can’t we just send notice of trial in the mail, and if it bounces back, oh well?”
  - “Why do you dismiss so many cases?”
  - “Why are your offers so different than other prosecutors?”
  - “Why do you include all of these extra requirements in the plea?”
  - “The judge provides the offers, so I really have no say.”
- Have quarterly meetings with PD Chief, Court Clerk, Judge, and City Manager (or someone from staff in the office)
  - Same page
  - Goals
  - Work through hurdles together

## ETHICAL DUTY RELATED TO “MASKING”

- Usually occurs with CDL cases
- Attorneys ask for a reduction in the speed, or changing the offense to a non-moving violation
- There are several directives from state and federal government indicating that this practice (called “masking”) is not proper (49 CFR 384.226 and CCP Art. 45.051(f))
  - (f) This article does not apply to:*
    - 1) an offense to which Section 542.404, Transportation Code, applies; or*
      - (2) a violation of a state law or local ordinance relating to motor vehicle control, other than a parking violation, committed by a person who:*
        - (A) holds a commercial driver's license; or*
        - (B) held a commercial driver's license when the offense was committed.*
- They can appeal—but must show some legal error (see CCP Art. 45.042); must be filed within 10 days of judgement entered (CCP Art. 45.0426)
- County courts cannot offer deferrals either, but may dismiss outright on appeal—NO GUARANTEES (In re State, 489 S.W.3d 24 (Tex.App.—Amarillo 2016)).

# PREPARATION IS KEY

- Prepare, prepare, prepare
- Know CCP Ch. 45!
- Know your Rules of Evidence (when they apply, and when they do not)
- Defense attorneys KNOW you are unprepared, especially if this is a part-time position for you
- Review your dockets ahead of schedule, prepare plea offers, and review videos
- Make notes in the file/INCODE

# PREPARATION IS KNOWING YOUR STATE/LOCAL LAWS AND LOCAL RULES

- Common statutes under Texas Transportation Code
  - Strict liability
  - Dahl v. State, 01-19-00864-CR, 2020 WL 3969625, at \*1 (Tex. App.—Houston [1st Dist.] July 14, 2020, no pet. h.)
- Code of Ordinances (digital on Franklin or Municode is most up to date)
- Work with the City Secretary for certified copy of an Ordinance (for trial, good practice to have this when Defendant contests whether it was a school zone, speed limit proper, etc.)
- Understanding what “possession” and “ownership” means
  - Who owns the house for code enforcement issues?
  - Who owns the animal for at-large, no rabies, no collar, etc. citations?
- Dangerous Dog Cases—ONLY dog on human—not dog on another animal—TXHSC 822
  - Not always euthanasia...work with local reputable rescues/agencies

**PREPARATION BY  
KNOWING  
COMMON ISSUES:  
CONTEMPT OF  
COURT, EX PARTE  
COMMUNICATION,  
AND FILING**

- What if an attorney no-shows? What if the defendant no-shows? Does it matter if it is a pre-trial setting or jury trial?
  - Exactly why documentation is critical
  - Bench warrant is always available (ask the judge)
  - Contempt of Court a good possibility for an attorney no-show—but must prove that the person had some intent not to show (difficult)—see Gov. Code Sec. 21.002(c)/(d)
  - But, see CCP 45.026 regarding ordering a party to pay reimbursement costs
  - Judges DO appreciate the courtroom being held to the same standard as a county/district court
- Ex Parte Communication (TX Disc. Rules of Prof. Conduct, Rule 3.05)
  - Opposite of Nike- just DON'T do it!
  - Easy to develop relationships with judges, and sometimes it slips – especially with pro se open cases
- Always serve the opposing party with your motions (including continuances) (CCP Art. 29.035 and 28.01)
  - Don't just assume the judge will grant it
  - Without a formal motion, there is no documentation – especially in courts with no record



## PREPARATION BY DOCUMENTATION

- Using INCODE = HUGE plus
- Work product does not get released under discovery – educate Clerks about this
- Helps prevent confusion for fill-ins, and provides background information for old cases
- Promotes efficiency when you review/take notes on cases before dockets
- Always good practice when speaking with defendants (pro se or attorneys)
- Mark anything not to be released as work product
- Keeping in mind—if speaking to a witness or victim, and notes are taken, any exculpatory evidence discussed/provided by victim must be provided to the opposing party

## **PRACTICE PROFESSIONALISM WITH YOUR ALLIES**

- Remember- you handle Class Cs, which often are the PC for higher-level offenses
- Have a good contact with the County Attorney or District Attorney on hand
- Consult with your contact (and get it in a written confirmation) that they're comfortable with you moving forward with the case before they do
- Develops positive relationships, and often moves cases more quickly

**PRACTICE  
PROFESSIONALISM  
BY FOSTERING  
POSITIVE  
RELATIONSHIPS  
WITH YOUR LAW  
ENFORCEMENT**

- Working with them on enhancing offenses
- Refiling with correct information
- Educating regarding proper testimony
- Mini-CLEs during role call: jurisdictional issues, report writing, warrant issues
- Ride-alongs

**PRACTICE  
PROFESSIONALISM  
BY RESPONSIBLE  
COMMUNICATION  
WITH DEFENSE  
COUNSEL**

- Let's face it, working with defense attorneys can sometimes be as frustrating as working with pro se defendants
- Remember—they can make your life much easier if you get along with them
- Keep in mind they are working for their clients...
- However...they should not receive an offer any different than someone who is pro se
- Don't get fooled—masking is NOT allowed ...

**PRACTICE  
PROFESSIONALISM  
BY  
COLLABORATING  
WITH COURT STAFF  
AND THE JUDGE**

- Work with them to develop procedures which increase efficiency
- Standing Orders
- Standing Motions to Dismiss
- Administrative Dismissals
- “Bigger” motions (Motion to Suppress, Motion for Discovery, etc.)

## **OTHER INTERESTING TIPS**

- Check out your court's (your) record on the OCA website!
- In trial, save your closing entirely for rebuttal...waive your opening if you are running low on time
- Family violence pleas must be in open court; prints must be taken when someone is charged\*
- What if D refuses to plead? See CCP Art. 45.024 –NOT GUILTY—just set for trial
- Jury charges—do them yourself! You are going to be the one using this in your closing
- Reconsideration of Fines/Costs? See CCP Art. 45.0445! CONSIDER THIS, especially if the defendant is communicating with the Court
- During COVID- how can we get Community Service for juveniles? Tutoring programs, mentoring programs, counseling, performing C/S for governmental entities, nonprofits, or an educational institution (See CCP Art. 45.0492)
- Have Ds for PODP offenses submit clean UAs (See CCP Art. 45.051 for authority)
- Sick of cases getting dismissed on the CA level? See CCP Art. 45.201 regarding handling the appeals!



Thank you!

Any questions, feel free to email:  
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