

Civil Appeals From Municipal Court

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THE GOOD THE BAD AND THE UGLY

No “One-Size-Fits-All” So Don’t Ask for the Simple Answer

- Different Rules By Subject Matter
- Different Rules by Different Counties
- Different Rules by Ordinance
- Default

Initial Considerations

- Talk to the attorney who will be enforcing the civil penalty or matter in muni court
- Draft ordinances with eye on appeal enforcement
- How Crazy is Your County Judge

Five Considerations Before Drafting

- 1. Some Counties Prevent Appeals by Very Structure
- 2. Appeal to County is the Appeal to Intermediate Court
- 3. No Mandamus Power or Other Writs Against County Court by COA*
- 4. Texas Supreme Court Redefined "Nuisance"
- 5. County May Be End of the Road

1. County Structure Prevents Appeal

- Two Types of County Courts –
 - Constitutional County Courts and
 - County Courts at Law.
- Default to “County Court” = Which One?
- It Depends
- Sometimes the Answer = Neither

In re Loban, 243 S.W.3d 827, 828 (Tex. App.—Fort Worth 2008, no pet.)

- Loban had two dogs declared to be dangerous animal.
- Sec. 822.0421 of the Texas Health and Safety Code = appeal from muni court to county court “in same manner as appeal from other” cases.
- County criminal courts in Tarrant County had no jurisdiction over civil matters. See Tex. Gov’t Code Ann. §25.2223(a)
- No appeal allowed

Court Dicta

- “This gap in the statutory right of appeal is apparently attributable to the fact that the provisions of the previous jurisdiction were not correspondingly amended to address appeals.”
- When the provisions of the previous jurisdiction were not correspondingly amended to address appeals, the civil court's decision were not correspondingly amended to address appeals.”



PLEASE BAIL ME OUT

I'll be good, I swearz

Express Statutory Update

- Under Tex. Health and Safety Code Chapter 822 dealing with dangerous dogs, as amended by H.B. 1436 in the 84th Legislative Session, effective September 1, 2015.
- A person now has an express statutory right to appeal to a county court or county court at law any municipal order under Tex. Health and Safety Code Ann. §822.0421(d) or §822.0423.
- But also = §822.0424 waives “motion for new trial” requirement to appeal.
- For other appeals, City must file MNT as well

- H.B. 4147, which became effective in September 1, 2017, provides that if a county does not have a county court at law, an appeal from a municipal court of record can be made to the county court.
- Loban's case, the county did have a county court at law... it simply was restricted to criminal jurisdiction.
Tex. Gov't Code
§30.00014(a)(West 2017).

Wrencher v. State, 03-15-00438-CV,
2017 WL 2628068, (Tex. App.—Austin
June 16, 2017, no pet.)

- “Skip” the dang
dog



- County courts at law
did have civil appellate
jurisdiction

Skip Lives

- Civil cases are appealable
- “Judgment” or “Conviction”
- “Defendant” means whoever is having enforcement against them

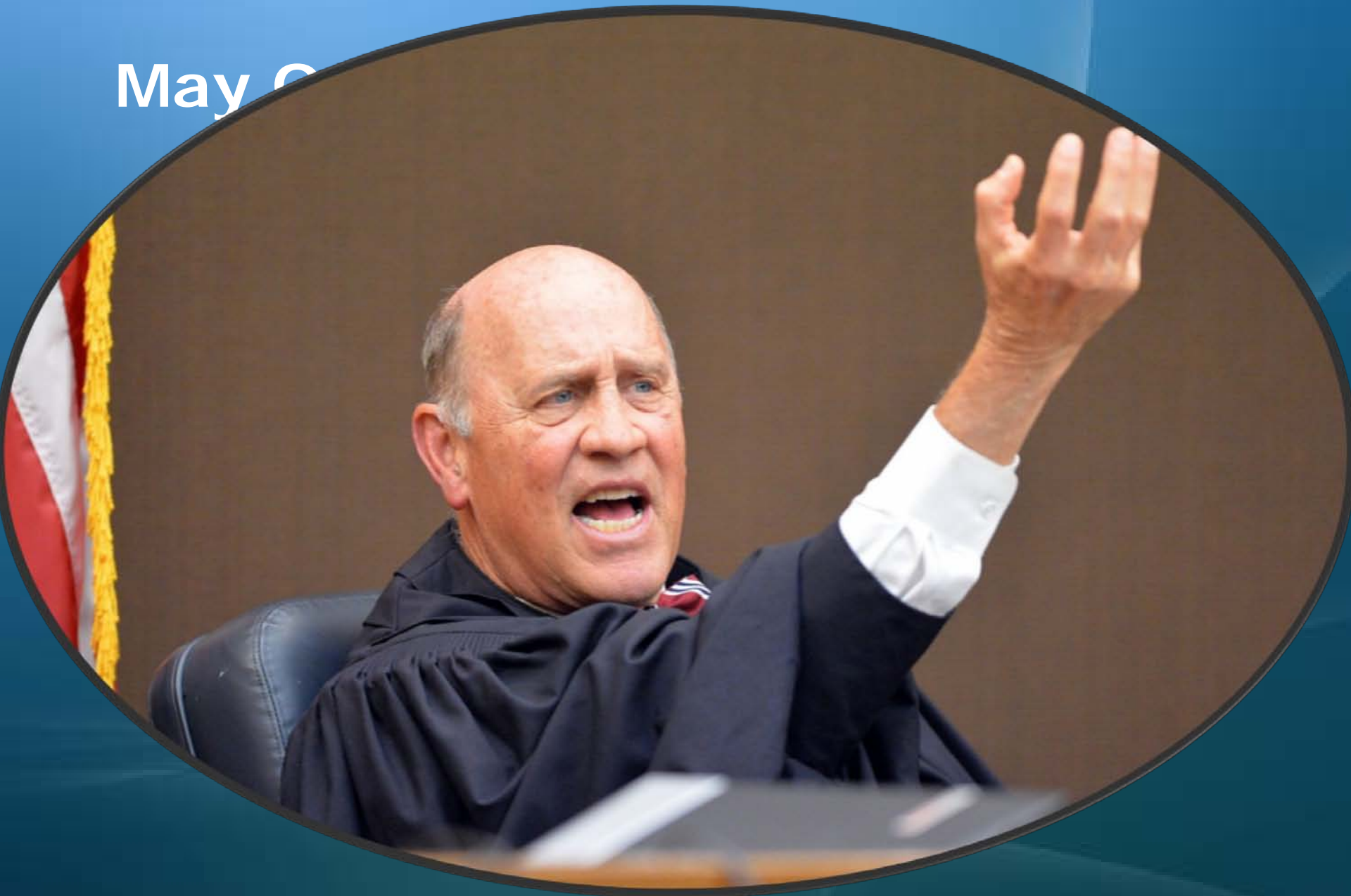
--- Warning-- City May Not Be Able to Appeal

- § 30.00014 - Appeal. "Defendant may appeal..."
- State has limited ability to appeal...
But "State" is not the "City" in civil context
- Unless statutorily authorized, City may not be able to appeal in all civil cases

2. May Only Get One Brief

- Court of Record Appeals Under Ch. 30
- Parties Write Briefs Under TRAP Rules
- If Party Appeals from County to Court of Appeals =
- Clerk Sends Same Brief and Record. Parties Get Nothing New

May 0



3. COA Power Over Mandamus

- How Crazy is Your Judge?



- *Powell v. Hocker*, 516 S.W.3d 488 (Tex. Crim. App. 2017)
- Mandamus to Avoid Abusive Discovery Order
- Filed Directly in High Court, Skipped COA

3. COA Power Over County – No Mandamus

- Title 2 reference to “county court” means constitutional county court
- Chapter 22 – creation of COA
- References only “county courts” so CC at Law not subject to mandamus by COA
- High Courts have mandamus power
- Record and Non-Record Courts

4. Nuisance Redefined

- Update Ordinances
- *Crosstex N. Texas Pipeline, L.P. v. Gardiner*, 505 S.W.3d 580 (Tex. 2016), reh'g denied (Dec. 16, 2016)
- “nuisance” refers not to a defendant’s conduct or to a legal claim or cause of action, but to a type of legal injury involving interference with the use and enjoyment of real property.
- Common nuisance v public nuisance

5. County Maybe End of Road

- Creation Statute Tex. Gov't Code §30.00027
- Appeal if:
 - 1. “fine is over \$100” and judgment is affirmed or
 - 2. Sole issue is constitutionality of law made bases if “conviction”

5. End of the Road

- Update ordinances to choose the ability to go to COA or not
- “Fine” has different meaning than “penalty” or “fee.”
- Only if judgment is affirmed
- Only if constitutional challenge (to your own ordinance?)

Conclusion

- **Criminal or Civil = Consult the Enforcer**
- **Different Counties Are Different**
- **Foundation Statutes Originally Criminal So No Perfect Fit**
- **How Crazy is Your County Judge**
- **Always Wear a Bullet Proof Vest**

