

# OFFICEHOLDING

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TEXAS JUSTICE COURT TRAINING CENTER

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# TABLE OF CONTENTS

CHAPTER 1: TEXAS COURT STRUCTURE.....	1
A. Appellate Courts.....	1
1. Highest Appellate Courts.....	1
2. Intermediate Appellate Courts.....	1
B. Trial Courts.....	2
1. Jurisdiction.....	2
2. District Courts.....	3
3. County Courts.....	3
4. Local Courts of Limited Jurisdiction.....	4
CHAPTER 2: THE JUSTICE COURT.....	6
A. Created by the Texas Constitution.....	6
B. Jurisdiction of the Justice Court.....	6
1. Original Jurisdiction.....	6
2. Exclusive Jurisdiction.....	6
3. Concurrent Jurisdiction.....	7
4. Jurisdiction Over Deed Restriction Enforcement Suits.....	7
5. Jurisdiction Over Unfinished Business of the Justice Court.....	7
6. What a Justice Court Does Not Have Jurisdiction of.....	7
7. Issuance of Writs of Attachment, Garnishment, and Sequestration.....	7
8. Additional Jurisdiction.....	8
C. Justice Court Precincts and Boundaries.....	8
1. Number of Precincts Determined by Population.....	8
2. Restrictions Based on County Size.....	8
D. Boundary Changes.....	8
1. When Boundaries Are Redrawn and Changes Occur.....	8
2. Vacancies Filled by the Commissioners Court.....	9
3. A Justice is Eligible for Reelection Even if the Boundary Change Puts the Justice’s Residence Outside the Precinct.....	9

4. After Election, Appointment, or Redistricting, a Justice of the Peace Only Has to Remain in the County.....	9
E. The Number of Justices in a Precinct is Determined by Population.....	9
F. Election or Appointment to Office.....	10
1. Term Lengths Are Four Years.....	10
2. A Justice of the Peace Does Not Have to be an Attorney.....	10
3. Qualifications for Public Office.....	10
4. Residency Requirements When Boundaries Have Changed.....	10
5. Disqualification for Giving a Bribe.....	10
6. Elected by the Voters.....	11
7. First Year Checklist.....	11
G. Rules of Administration.....	11
H. Dual Office Holding.....	12
1. Dual Office Holding Allowed for Justices of the Peace.....	12
2. Separation of Powers Doctrine.....	12
3. The Doctrine of Incompatibility Might Prohibit Dual Office Holding.....	12
I. Oath of Office and Bond.....	13
1. Bond.....	13
2. Commissioned as Justice of the Peace and Ex Officio Notary Public.....	13
3. Anti-bribery Statement Must Be Signed Before Taking the Oath of Office.....	14
4. Oath or Affirmation Must Be Taken Before Entering Upon the Duties of Office.....	14
J. Court Seal to be Furnished by the Commissioners Court.....	14
K. Records and Other Property.....	15
1. Justice of the Peace as Custodian of Records.....	15
2. A Justice Must Keep All Dockets, Books, and Papers Filed.....	15
3. When a Justice Vacates Office.....	15
4. Delivery of Documents Upon Demand.....	15
L. Holding Court.....	15
1. Commissioners Court Determines When to Hold Court.....	15
2. Location of a Justice of the Peace’s Office Determined by County Size.....	16

M. Clerk of the Court.....	17
1. A Justice Clerk Has No Authority to Act Independently.....	17
2. A Clerk Can't Be Involved in a Proceeding if They are an Interested Party.....	17
3. Duties of the Justice Clerk.....	17
4. Use of a Signature Stamp by a Clerk.....	18
5. The Criminal Docket Must Be Posted at the Courthouse if it's Not Available Online.....	18
N. Vacancy or Absence of a Justice of the Peace.....	18
1. The Nearest Justice in the County Serves.....	18
2. A Vacancy is Filled by the Commissioners Court.....	18
O. Exchange of Benches.....	19
1. Justices May Exchange Benches in any County in Texas.....	19
2. Exchange of Benches is for Five Days.....	19
3. No Compensation for Exchanging Benches.....	19
4. Unavailability of a Justice to Conduct an Inquest.....	19
P. Transfer of Cases.....	20
1. Justices Within the Same County Can Transfer Cases Back and Forth with Consent and Jurisdiction.....	20
2. Justices Can Swap Benches and Courtrooms Without Transferring the Case.....	20
3. Judgments are Entered in the Court Where the Case is Pending.....	20
4. Everything Issued by the Original Court is Returnable to the Court Accepting Transfer.....	20
Q. Special and Temporary Justices.....	20
1. If a Justice Can't Hear a Case, the Parties May Agree on Someone to Try the Case.....	20
2. A Qualified Person Will Be Appointed to Hear the Case if the Parties Can't Agree.....	21
3. If a Qualified Person Can't Be Found, A Qualified Voter May Be Appointed.....	21
4. Appointment of a New Justice of the Peace Must Be Noted on the Docket.....	21
5. A Temporary Justice Can Serve for the Duration of a Justice's Absence.....	21
6. Temporary Justices Are Paid the Same as the Justice They Are Filling in For.....	21
7. Temporary Justices Have the Same Powers as the Justice They Are Filling in For.....	21

8. Temporary Justices Can Live in Any County.....	22
9. Temporary Justices Appointed to Dispose of Accumulated Court Business.....	22
R. Temporary Replacement of Public Officer on Military Active Duty.....	22
1. Temporary Justice Appointed if the Active Duty Term is More than 30 Days.....	22
2. Temporary Justices Have the Same Power and Get the Same Compensation as the Justices They Are Filling in For.....	22
S. Declining Compensation.....	23
1. Remuneration Can Be Declined.....	23
2. How to Decline Remuneration.....	23
3. Effective Date of Declination.....	23
4. Revocation of a Declination.....	23
T. Additional Rules for Harris County Justice Courts.....	24
1. Selection of a Presiding Judge.....	24
2. Appointment of a Special Judge to Assist a Qualified Person.....	24
CHAPTER 3: OTHER DUTIES AND POWERS OF A JUSTICE .....	25
A. Contempt Powers.....	25
1. General Contempt.....	25
2. Juvenile Contempt.....	30
3. Property Code Contempt.....	31
4. Contempt as a Last Resort.....	32
B. Ex Officio Notary Public.....	33
1. A Justice of the Peace is Automatically an Ex Officio Notary Public.....	33
2. No Bond or Oath Required.....	33
3. An Ex Officio Notary Public is Governed by the Same Statutes as a Notary Public.....	33
4. An Ex Officio Notary Public Can't Acknowledge an Instrument He or She is a Party To.....	34
5. How Long Does a Justice Serve as an Ex Officio Notary Public?.....	34
6. Ex Officio Notary Public Duties Are Separate from Justice of the Peace Duties.....	34
7. Authority to Take Acknowledgments or Proofs of Written Instruments.....	34
8. Authority to Make a Certificate of Dishonor.....	34

9. Statewide Jurisdiction to Perform Notary Functions.....	35
10. Oaths Made in Texas.....	35
11. Oaths Made Outside Texas.....	35
12. Ex Officio Notary Public Not Responsible for Filing a Notarized .Statement.....	35
13. Proof of Identity.....	35
14. Signing a Document for an Individual with a Disability.....	36
15. Use of a Notary Seal to Authenticate Official Acts of the Ex Officio .Notary Public.....	36
16. What Happens if a Notary Seal is Not Attached to an Instrument?.....	37
17. Reporting, Record Keeping, and Fees.....	37
C. Local Registrar for the Bureau of Vital Statistics.....	38
1. State Divided into Registration Districts.....	38
2. A Justice of the Peace is the Local Registrar for Their Precinct.....	38
3. Deputy Registrars to be Appointed.....	38
4. Failure or Refusal to Register Births and Deaths.....	38
5. Delay in Filing a Birth Certificate Allowed Due to Religious Reasons.....	38
6. Local Registrar Must Sign Each Report.....	38
7. Reporting, Record Keeping, and Fees.....	39
D. Marriage Ceremonies.....	39
1. Justices of the Peace Can Perform Marriage Ceremonies.....	39
2. A Justice of the Peace Can Charge for Performing Ceremonies but Can't Advertise.....	39
3. Statewide Jurisdiction to Perform a Marriage Ceremony.....	39
4. A Marriage Ceremony Can Be Conducted Once the Justice of the Peace Receives a Valid License.....	39
5. Marriage Licenses Are Obtained from the County Clerk.....	39
6. States Have to Issue Marriage Licenses to Same Sex Couples.....	40
7. Justices of the Peace Cannot Refuse to Perform Marriage Ceremonies for Same Sex Couples if They Want to Continue Performing Marriage Ceremonies for Opposite Sex Couples.....	40
8. Discrimination in Conducting Marriage Ceremonies is Prohibited and Can Lead to Removal of Office.....	40
9. A Person on Active Duty in the Military Can Be Married by Proxy.....	40
10. No Official or Mandatory Marriage Ceremony Wording.....	41

11. 72-Hour Waiting Period.....	41
12. Waiver to the 72-Hour Waiting Period.....	41
13. Marriage Performed During the Waiting Period Can Be Annulled.....	42
14. Once a Ceremony Occurs, What Happens with the License?.....	42
15. It is the Responsibility of the Person Who Performed the Ceremony to Return the License.....	42
E. Collecting Money.....	42
1. Costs Not Payable in Justice Court Until a Written Bill is Given to the Person.....	42
2. No Costs for Services Not Performed.....	43
3. Depositing the Money Collected.....	43
4. Bill of Costs in a Transferred or Appealed Case.....	43
5. No Additional Costs Assessed After a Defendant Has Paid Without a Motion Filed.....	43
6. Correcting Errors in Costs.....	43
7. Reporting and Record Keeping.....	43
CHAPTER 4: RECORD KEEPING AND REPORTING.....	44
A. Court Records.....	44
1. Records Required to be Kept.....	44
2. Dockets May Be Kept Electronically.....	44
3. Civil Docket Requirements.....	44
4. Criminal Docket Requirements.....	45
5. Separate Record for Fees.....	45
6. Each Justice of the Peace is the Records Custodian for His or Her Court...	45
7. Court Appointment Reporting.....	46
B. Reporting and Record Keeping as an Ex Officio Notary Public.....	47
1. A notary Must Maintain a Fee Book.....	47
2. Requirements of the Notary Book.....	47
3. Entries Are Public.....	48
4. Any Person Can Obtain a Copy of a Record of Official Acts.....	48
C. Reporting and Record Keeping as the Local Registrar.....	48
1. Reports of Information.....	48



2. Certificates and Records.....	49
3. Death Certificates.....	50
4. Certificate of Birth Resulting in Stillbirth.....	51
D. Reporting and Record Keeping When Collecting Money for the County.....	52
1. Report Required.....	52
2. Fee Records.....	53
3. Receipt Books.....	53
4. Audit of Receipt Books and Records.....	54
5. Monthly Reports to Commissioners Court.....	54
E. Required Financial Reporting.....	55
1. Financial Statement Required.....	55
2. Requirements of the Statement.....	55
3. Filing Dates.....	56
4. Timeliness of Filing.....	57
5. Extension for Filing.....	57
6. Electronic Filing Allowed.....	58
7. Public Access to Financial Statements.....	58
8. Notification to Prosecuting Attorney if a Justice of the Peace Doesn't File a Financial Statement.....	58
F. Management and Preservation of Records.....	58
1. Duties as the Records Management Officer.....	58
2. Justices of the Peace Shall Receive Assistance from the Director and Librarian.....	59
3. Records Can Be Stored Electronically Anytime There is a Requirement That Records Be Kept in a Book.....	59
4. Local Government Records Are Public Property.....	59
5. Records Are to Be Delivered to the Justice's Successor.....	59
6. Destruction of Records.....	60
CHAPTER 5: FEES.....	62
A. Fees Associated with Being an Ex Officio Notary Public.....	62
1. Fee Amounts Set by Statute.....	62
2. Fee List Must Be Posted.....	62

3. Fees Not Due Until a Bill is Produced.....	62
B. Fees Associated with Being the Local Registrar.....	63
1. Services That Fees Can Be Collected For.....	63
2. Local Registrars Collect the Same Fees as the Department.....	63
3. Fees Retained and Remitted for Issuing Birth Certificates.....	63
5. Additional Fee Collected for Certain Actions.....	63
6. Additional Fee Allowed for Preservation of Records and Training Expenses.....	64
C. Fees Associated with Performing Marriage Ceremonies.....	64
D. Costs for Copies.....	64
1. Fees for Certified Copies.....	64
2. Fees for Copies of Documents Other Than Certified Copies.....	64
E. Payment of Fees or Costs by Credit Card or Electronic Means.....	64
1. Fees Can Be Paid by Credit Card or Electronic Means.....	64
2. A Processing Fee Can Be Charged for Electronic Payments.....	64
CHAPTER 6: ETHICS.....	65
A. Code of Judicial Conduct.....	65
1. Canon 1 – Upholding the Integrity and Independence of the Judiciary.....	65
2. Canon 2 – Avoiding Impropriety and the Appearance of Impropriety in All of the Justice’s Activities.....	66
3. Canon 3 – Performing the Duties of the Judicial Office Impartially and Diligently.....	67
4. Canon 4 – Conducting the Justice’s Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations.....	70
5. Canon 5 – Refraining from Inappropriate Political Activity.....	73
6. Canon 6 – Compliance with the Code of Judicial Conduct.....	74
7. Canon 7 – Effective Date of Compliance.....	75
8. Canon 8 – Construction and Terminology of the Code.....	75
B. Disqualification.....	76
1. When is a Justice of the Peace Disqualified?.....	76
2. Transfer of a Case When a Justice is Disqualified.....	79
C. Recusal.....	80
1. Grounds for Recusal.....	80

2. Parties Can Waive Grounds for Recusal.....	81
3. A Temporary Justice Can Be Appointed if a Justice is Unavailable Due to Recusal.....	81
D. Nepotism.....	81
1. No Appointment or Confirmation of Appointment of Relatives.....	81
2. When Appointment or Confirmation of Relatives is Allowed.....	82
3. Removal from Office for Violating Nepotism Laws.....	82
E. Campaigns and Contributions.....	82
1. Political Contributions Cannot Be Converted to Personal Use.....	82
2. Code of Fair Campaign Practices.....	83
CHAPTER 7: LIABILITY.....	85
A. Civil Liability.....	85
1. How Can a Justice of the Peace Be Sued?.....	85
2. Definition of Public Servant for Civil Liability.....	85
3. Immunity and Limitations.....	86
4. Actions for Which a Justice Can Be Held Civilly Liable.....	88
B. Criminal Liability.....	94
1. Theft.....	94
2. Bribery.....	95
3. Acceptance of Honorarium.....	96
4. Gift to Public Servant by a Person Subject to His or Her Jurisdiction Prohibited.....	96
5. Tampering with Governmental Records Prohibited.....	97
6. Abuse of Official Capacity.....	98
7. Official Oppression.....	99
8. Misuse of Official Information.....	100
9. Restrictions on Blacklisting.....	100
10. Violating Nepotism Laws is an Offense Involving Official Misconduct.....	101
11. Violation of Campaign Contribution Laws.....	101
12. Violation of Required Financial Reporting.....	102
13. Failure to Furnish County Auditor with Report.....	102

14. Solicitation or Acceptance of Referral Fees or Gifts by a Justice of the Peace.....	103
15. Collecting Debt for Another.....	103
16. Ex Officio Notary Public Misrepresenting Himself or Herself.....	104
17. Failure to Return the Marriage License.....	105
18. Performing a Marriage Ceremony with an Expired Marriage License.....	105
19. Violation of Provisions Related to Keeping Receipt Books.....	106
CHAPTER 8: SANCTIONING BODIES AND THE COMPLAINT PROCESS.....	107
A. Agencies Responsible for Discipline.....	107
1. State Commission on Judicial Conduct .....	107
2. District Court Judges.....	107
3. Justices of the Peace Who Are Attorneys Can Be Disciplined by the State Commission on Judicial Conduct and the State Bar.....	107
4. Secretary of State, Attorney General, or the District Attorney Handles Discipline for Non-judges and Non-attorneys.....	107
B. State Commission on Judicial Conduct.....	107
1. The Commission’s Jurisdiction.....	108
2. Commission’s Objective is to Preserve Integrity of Judges and Justices of the Peace.....	108
3. Distribution of Materials to Judges and the Public.....	108
4. Public Statements Issued by the Commission.....	108
5. Investigations and Formal Proceedings.....	108
6. Judicial Misconduct Information.....	112
7. Physical or Mental Incapacity of a Judge.....	112
8. Confidentiality of Papers, Records, and Proceedings.....	112
9. Punishment by the State Commission on Judicial Conduct.....	113
C. District Court Judges.....	115
1. Petition for Removal of a Justice of the Peace.....	115
2. Citation Must Be Applied for and Served on the Justice of the Peace.....	115
3. Suspension of the Justice Pending Trial.....	116
4. Justices of the Peace Can Only Be Removed by Jury Trial.....	116
5. Appeal of the Final Judgment is to the Court of Appeals.....	117
D. Actions That Can Result in Removal from Office.....	117

1. Actions That Can Result in Removal from Office by the State Commission on Judicial Conduct.....	117
2. Actions That Can Result in Removal from Office by a District Court Judge.....	118
3. Actions That Can Result in Automatic Removal from Office.....	119
CHAPTER 9: PUBLIC ACCESS TO INFORMATION.....	121
A. Rules of Judicial Administration Rule 12.....	121
1. Rule 12 is the Main Authority on Public Access to Judicial Records.....	121
2. Purpose of the Rule.....	121
3. Definitions.....	121
4. Applicability of Rule 12.....	122
5. Access to Judicial Records.....	123
6. Exemptions from Disclosure.....	123
7. Procedures for Obtaining Access to Judicial Records.....	124
8. Costs for Copies of Judicial Records.....	125
9. Denial of Access to a Judicial Record.....	126
10. Petition for Review of Denial of Access to Judicial Records.....	127
11. Sanctions.....	128
B. Public Access to Court Case Records.....	128
1. Definition of Court Case Record.....	128
2. General Rule.....	129
3. Access Limited by Statute.....	129
4. No Appeal for Denial of Access.....	129
C. Confidentiality of Certain Information.....	129
1. Confidentiality of Credit Card, Debit Card, Charge Card, and Access Device Numbers.....	129
2. Confidentiality of Certain E-mail Addresses.....	129
CHAPTER 10: ADDITIONAL RESOURCES.....	130
A. Confidentiality of a Justice’s Home Address.....	130
B. License to Carry a Handgun.....	130
1. What the Justice Must Submit to DPS.....	130
2. Proficiency Requirements.....	130

C. Texas Lawyer’s Assistance Program (TLAP) .....	131
1. Not Just for Lawyers.....	131
2. Do it for Yourself or Another Needing Help.....	131
3. Services.....	131
D. Intimate Partner Violence Resources.....	131
1. Texas Council on Family Violence.....	131
2. National Domestic Violence Hotline.....	132
3. Office on Violence Against Women of U.S. Department of Justice.....	132
4. Family Justice Center Alliance.....	132
5. National Center for Domestic and Sexual Violence.....	132
6. Office of Court Administration Domestic Violence Resource Program.....	132
7. Texas Municipal Courts Education Center.....	132
E. Helpful Contact Information.....	132
1. Office of Court Administration (OCA) .....	132
2. Texas State Library Archives Commission.....	132
3. State Commission on Judicial Conduct.....	133
4. Local Mental Health Authorities (LMHAs) .....	133
5. Texas Vital Statistics.....	133
F. Documents Referenced in the Text.....	133
1. Consanguinity and Affinity Chart.....	133
2. Rule 12 Decision 00-001 (2000).....	134
3. Rule 12 Decision 06-001 (2006).....	137
CHAPTER 11: APPENDIX OF CASES.....	139

## FOREWORD

This deskbook on *Office Holding (1<sup>st</sup> ed. April 2018)* represents the Texas Justice Court Training Center's ongoing commitment to provide resources, information and assistance on issues of importance to Texas Justices of the Peace and Constables and their court personnel, and continues a long tradition of support for judicial education in the State of Texas by the Justices of the Peace and Constables Association of Texas, Inc.

We hope you will find it to be a valuable resource in providing fair and impartial justice to the citizens of Texas.

Thea Whalen  
Executive Director

## USER NOTES

This deskbook on *Office Holding* in justice courts (*1<sup>st</sup> ed. April 2018*) is intended to offer a practical and readily accessible source of information relating to issues you are likely to encounter while holding office as a justice of the peace.

This deskbook is not intended to replace original sources of authority, such as the Government Code, Civil Practice and Remedies Code, Texas Constitution, or the Texas Rules of Civil Procedure. We strongly recommend that you refer to the applicable statutory provisions and rules when reviewing issues discussed in this book.

Please note that all references to “Rule \_\_\_” are to the Texas Rules of Civil Procedure.

Rather than including the citations to cases in the text of the deskbook, we have listed only the case name in the text but have included the entire citation in the appendix of cases.

Please do not hesitate to contact us should you have any questions or comments concerning any of the matters discussed in *Office Holding*.

Texas Justice Court Training Center  
April 2018



# CHAPTER 1: TEXAS COURT STRUCTURE

The Texas court system is made up of appellate courts and trial courts, each functioning at a different level and with a different purpose. Appellate courts include the state’s highest appellate courts and the intermediate appellate courts. Trial courts include district courts, county level courts, and local courts of limited jurisdiction. Justice courts fall under the categories of trial courts and local courts of limited jurisdiction.

## A. Appellate Courts

Appellate courts do not try cases, have juries, or hear witnesses. They review actions and decisions of the lower courts on questions of law or allegations of procedural error. This is called appellate jurisdiction, where a higher court has the power to review a lower court’s decision. In carrying out this review, the appellate courts are usually restricted to the evidence and exhibits presented in the trial court.

### 1. Highest Appellate Courts

The state’s highest appellate courts are constitutionally created and made up of the Supreme Court of Texas and the Texas Court of Criminal Appeals.

All rulings that come out of these courts are final and cannot be appealed to any other court, except to the U.S. Supreme Court under certain circumstances. All petitions for review of a case to either of these courts must be considered, however the granting of review is discretionary and rare.

#### *a. Supreme Court of Texas*

There is one Supreme Court made up of nine justices. This court has statewide final appellate jurisdiction for all civil and juvenile cases.

#### *b. Texas Court of Criminal Appeals*

There is one Court of Criminal Appeals made up of nine justices with final appellate jurisdiction for all criminal cases.

### 2. Intermediate Appellate Courts

The intermediate appellate courts, known as the Courts of Appeal, are constitutionally created and have regional jurisdiction to review trial court decisions from the trial courts in their respective regions. Review of a case by these courts is mandatory if a party appeals a trial court’s decision.

There are fourteen regions in Texas with one appeal court per region. Each court has at least three justices, a chief justice and two associate justices for a total of 80 justices throughout the state.

## Texas Court Structure

### Appellate Courts:

- Supreme Court of Texas
- Texas Court of Criminal Appeals
- Intermediate Courts of Appeal

### Trial Courts:

- District Courts
- County Courts
- Local Courts of Limited Jurisdiction

## B. Trial Courts

In trial courts, witnesses are heard, testimony is received, exhibits are offered into evidence, and a verdict is rendered. Almost all cases heard in a trial court can be appealed to a higher court.

### 1. Jurisdiction

Trial courts can have general, original, exclusive, or appellate jurisdiction, or they may have a combination of several types of jurisdiction.

#### *a. General Jurisdiction*

General jurisdiction refers to the power of a court to hear a case that can also be heard in other courts. The general jurisdiction of a court is limited by constitutional or statutory provisions that give other courts in the same county or counties exclusive, original, or appellate jurisdiction to hear that specific type of case.

#### *b. Exclusive Jurisdiction*

Exclusive jurisdiction refers to the power of a court to adjudicate a case to the exclusion of all other courts. It is the only court that can determine a particular type of case. Exclusive jurisdiction is determined by the subject matter of a case and whether a particular court can hear that type of case.

An example of a court with exclusive jurisdiction is the justice court when it comes to hearing civil cases where the amount in controversy is less than \$200. These cases must be heard in justice court and can't be heard by any other court. Any decision made by the justice court is final and neither party can appeal the case to the county court if they are unhappy with the justice of the peace's decision.

#### *c. Concurrent Jurisdiction*

Concurrent jurisdiction occurs when two or more different courts have jurisdiction over a case at the same time. For example, a county court and a district court both have jurisdiction over divorces and the case can be heard in either court.

#### *d. Original Jurisdiction*

Original jurisdiction is the power of the court to hear a case for the first time such as a traffic citation in justice court. The defendant must have his case heard at the justice court level first, and upon a plea being entered or a finding by the judge, the defendant can then appeal the case to the county court level for a new trial.

#### *e. Appellate Jurisdiction*

As mentioned above, appellate jurisdiction is where a higher court has the power to review a lower court's decision. If the lower court is a court of record, then the appellate court reviews the record taken at the lower court and makes a ruling on whether the trial court acted correctly or not. If an appellate court decides the trial court made a mistake, the appellate court can render a new judgment

### Types of Jurisdiction:

- General
- Exclusive
- Concurrent
- Original
- Appellate

Jurisdiction is determined by the case, and all courts have more than one type of jurisdiction.

or send the case back to the trial court to retry it. A court is a “court of record” if transcripts of the proceedings and testimony are made by a court reporter.



KEY  
POINT

Appeals from justice court and municipal courts that are not courts of record are different because those cases are tried de novo at the county court level. Trial de novo is a new trial in which the entire case is presented as if there hadn’t been a previous trial. Basically, the case starts over from the beginning and decisions made at the lower court level don’t count since the court is not a court of record and there are no transcripts to send up with the original case.

## 2. District Courts

District courts are constitutionally created trial courts of general and original jurisdiction. They are the primary trial courts in Texas.

Original jurisdiction:

- All felony criminal cases and
- Misdemeanors involving official misconduct.

General jurisdiction:

- Suits for title to land or enforcement of liens on land,
- Contested elections,
- Suits for slander or defamation,
- Suits on behalf of the state for penalties, forfeitures, and escheat, and
- Civil matters where the amount in controversy is \$200,000 or more.

Concurrent jurisdiction with county level courts:

- Juvenile matters,
- Contested divorce cases and other family law disputes,
- Contested probate and guardianship matters, and
- Civil matters where the amount in controversy exceeds \$500 but is less than \$200,000.

Most district courts exercise criminal and civil jurisdiction, but in metropolitan areas there is a tendency for courts to specialize in civil, criminal, juvenile, or family law matters. Thirteen of the district courts are designated as “criminal district courts” giving preference to criminal cases, but still have general jurisdiction to hear any case a district court is allowed to hear.

Appeals from judgments of the district courts, other than death sentence appeals which go straight to the Court of Criminal Appeals, are made to the court of appeals.

## 3. County Courts

County courts are constitutionally and statutorily created trial courts of limited jurisdiction, meaning they can only hear certain cases. In addition to the county courts created by the Texas Constitution, the legislature created statutory county courts, or “county courts at law”, to accommodate increasing population growth and caseloads. Therefore, county courts at law have the same jurisdiction over all causes and proceedings as county courts.

### District Courts

At the end of 2017, there were 469 district courts and court judges in Texas.

371 of the district courts service one county only, while the remaining 98 courts contain more than one county in their jurisdiction.

Concurrent jurisdiction with justice courts:

- Civil cases where the matter in controversy exceeds \$200 but does not exceed \$10,000.

Concurrent jurisdiction with district courts:

- Civil cases where the matter in controversy exceeds \$500 but does not exceed \$200,000.

General jurisdiction:

- Probate,
- Guardianship, and
- Juvenile cases.

Exclusive original jurisdiction:

- Misdemeanors, other than those involving official misconduct, where punishment for the offense is by fine exceeding \$500 or a jail sentence not to exceed one year.

County courts generally have appellate jurisdiction, usually by trial de novo, over cases tried in the justice and municipal courts. To have jurisdiction over a civil case from a justice court, the amount in controversy must be \$250 or more. Original and appellate judgments of the county courts may be appealed to the court of appeals.

#### **4. Local Courts of Limited Jurisdiction**

Justice and municipal courts make up the local trial courts of limited jurisdiction. Justice courts are constitutionally created, and municipal courts are statutorily created. There is at least one justice court in each county and at least one municipal court in each incorporated city of the state.

##### ***a. Jurisdiction of Justice Courts***

Original jurisdiction:

- Misdemeanor cases where punishment is by fine only, and
- Civil matters in which the amount in controversy exceeds \$200 but does not exceed \$10,000.

Exclusive jurisdiction:

- Civil matters where the amount in controversy does not exceed \$200, and
- Eviction cases.

Concurrent jurisdiction with municipal courts:

- Truancy cases.

Justice courts are not courts of record, meaning that nothing that is said or occurs in court is taken down by a court reporter. If a case is appealed from the justice court, the case is heard by a higher court as if it was the first time the case was heard, referred to as trial de novo.

## **County Courts**

There are:

- 254 county courts, one for each county,
- 244 county courts at law, and
- 18 statutory probate courts located in ten counties, for a total of 516 courts and judges in Texas at the end of 2017.

Justice court jurisdiction is discussed in greater detail beginning on page 6, and in the Civil Deskbook at pages 3-8.

***b. Jurisdiction of Municipal Courts***

Original and exclusive jurisdiction:

- Criminal violations of certain municipal ordinances.

Concurrent jurisdiction with justice courts:

- Misdemeanor criminal cases that are punishable by fine only, and
- Truancy cases.

Some municipal courts are courts of record but most are not. Appeals from municipal courts that are not courts of record are de novo to the county courts, and in some instances to the district courts. Appeals from municipal courts that are courts of record are taken on the record to the county courts.

For a flowchart explaining the court structure [click here](#).

## Local Courts of Limited Jurisdiction

At the end of 2017, there were

- 802 justice courts and judges,
- 938 municipal courts, and
- 1,326 municipal judges

# CHAPTER 2: THE JUSTICE COURT

## A. Created by the Texas Constitution

The Texas Constitution created the justice courts and governs their jurisdictional powers. The Constitution also allows for additional jurisdiction and duties to be created or added by the legislature through passage of new laws. However, the “existence of the justice court is beyond the power of the legislature to destroy.” *Ex Parte Richmond*.

The legislature can add to the duties and jurisdiction of the justice court but it can’t take away any powers or duties. Conferring authority on the justice courts, creating the number of precincts in a county, and establishing the qualification requirements for justices of the peace can only be accomplished by constitutional amendment or by acts of the legislature specifically authorized by the Constitution.

## B. Jurisdiction of the Justice Court

Article V Section 19 of the Texas Constitution and Section 27.031(a) of the Government Code set out the jurisdiction of the justice courts as it pertains to civil and criminal cases. This topic is also discussed in the Civil and Criminal Deskbooks.

### 1. Original Jurisdiction

Justice courts have original jurisdiction of:

- Criminal misdemeanor cases punishable by fine only,
- Civil matters in which exclusive jurisdiction is not in the district or county court, and in which the amount in controversy is not more than \$10,000, exclusive of interest,
  - Small claims cases
  - Debt claim cases
  - Repair and remedy cases
- Foreclosure of mortgages and enforcement of liens on personal property in cases in which the amount in controversy is otherwise within the justice court’s jurisdiction, and
- Cases dealing with a photographic traffic signal enforcement system.



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### Civil Cases in Justice Court:

- Small Claims Cases
- Debt Claim Cases
- Repair and Remedy Cases
- Eviction Cases

*Government Code §27.031(a); Texas Rules of Civil Procedure Rule 500.3.*

### 2. Exclusive Jurisdiction

Justice courts have exclusive jurisdiction of:

- Civil matters where the amount in controversy is two hundred dollars or less, and
- Eviction cases.

### 3. Concurrent Jurisdiction

Justice courts have concurrent jurisdiction with municipal courts of:

- Truancy cases, and
- Cases that arise outside a municipality's jurisdiction under an ordinance of the municipality applicable to that location regarding regulation of outdoor signs. *Government Code §27.031(c)*.

A justice court has concurrent jurisdiction with a district court and a municipal court of record over expunction proceedings relating to the arrest of a person for an offense punishable by a fine only. *Government Code §27.031(e)*.

### 4. Jurisdiction Over Deed Restriction Enforcement Suits

A justice court has jurisdiction over suits relating to enforcement of a deed restriction for a residential subdivision that does not concern a structural change to a dwelling. *Government Code §27.034(a)*.

The justice court can't issue an injunction or force a party to do something, but the court can order any alternative method of dispute resolution provided by Title 7, Civil Practice and Remedies Code. *Government Code §27.034(c)*.

A justice has deed restriction jurisdiction regardless of the amount in controversy and jurisdiction is concurrent with the district court. *Government Code §27.034(e)*.

### 5. Jurisdiction Over Unfinished Business of the Justice Court

A justice of the peace may proceed with all unfinished business of the office as if the business had been originally begun before that justice. *Government Code §27.033*.

### 6. What a Justice Court Does Not Have Jurisdiction of

A justice court does not have jurisdiction of:

- A suit in 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.

*Government Code §27.031.*

### 7. Issuance of Writs of Attachment, Garnishment, and Sequestration

Justices of the peace may issue writs of attachment, garnishment, and sequestration within the justice's jurisdiction in the same manner as judges and clerks of the district and county courts. *Government Code §27.032.*



## 8. Additional Jurisdiction

In addition to the jurisdiction discussed above, justices of the peace have jurisdiction over various administrative proceedings, inquests, and duties related to magistration. Details can be found in the deskbooks for each of those topics.

## C. Justice Court Precincts and Boundaries

### 1. Number of Precincts Determined by Population



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Each county is divided into precincts. The number of precincts in each county is determined by the county's population and may change periodically.

Precincts are re-drawn from time to time, for the convenience of the people, according to the most recent federal census.

The number and geography of precincts is determined by the commissioners court. *Texas Constitution Art. 5 §18(a)*.

### 2. Restrictions Based on County Size

Counties with populations of less than 18,000 shall have one precinct unless the commissioners court determines the county needs more. There can be no more than four precincts in counties with populations of less than 18,000 people.

Counties with populations between 18,000 and 50,000 people shall have at least two, but no more than eight precincts.

Counties with populations greater than 50,000 shall have at least four, but no more than eight precincts.

Any county divided into four or more precincts on November 2, 1999 will continue to be divided into at least four precincts regardless of the population.

Chambers County and Randall County shall be divided into at least two but no more than six precincts. *Texas Constitution Art. 5 §18(a)*.

## D. Boundary Changes

### 1. When Boundaries Are Redrawn and Changes Occur

If boundaries are redrawn and the change:

- Causes the justice of the peace's residence to be located outside the precinct where the justice was elected or appointed,
- Abolishes the precinct for which the justice was elected or appointed, or
- Temporarily results in extra justices of the peace serving the precinct,



each justice of the peace in office at the time of the change will serve in the new precinct where the justice resides for the duration of the term for which the justice was elected or appointed. *Texas Constitution Art. 5 §18(c)*; *Op. Tex. Att’y. Gen. No. L093-45 (1993)*.

For example: a justice of the peace is elected to precinct 1. During the justice’s term, the boundaries are redrawn and the justice now resides in precinct number 2. The justice will now serve in precinct 2 until the end of his term. This is true even if the new boundary lines result in two justices serving in precinct 2 and no justices serving in precinct 1.

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A public officer has no vested right in the office held, and therefore cannot complain of abolishment of that office. *Tarrant County v. Ashmore*.

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## **2. Vacancies Filled by the Commissioners Court**

When a vacancy occurs in a justice of the peace office as a result of a change in precinct boundaries, the commissioners court will fill the vacancy by appointing a justice of the peace to serve until the next general election. *Texas Constitution Art. 5 §18(c)*.

## **3. A Justice is Eligible for Reelection Even if the Boundary Change Puts the Justice’s Residence Outside the Precinct**

A person who has served as justice of the peace of a precinct for ten or more consecutive years prior to a boundary change of their precinct is eligible for reelection in that same precinct, even if the new boundaries puts their residence outside the precinct, so long as the justice’s residence was within the boundaries of the precinct before the change. *Government Code §27.003*.

## **4. After Election, Appointment, or Redistricting, a Justice of the Peace Only Has to Remain in the County**

After election, appointment, or redistricting, a justice of the peace does not have to continue residing in the precinct in which he or she serves in order to retain office in that precinct so long as he or she continues to reside in the county in which he serves. *Op. Tex. Att’y. Gen. No. L093-45 (1993)*.

However, the justice does have to continue residing in his or her precinct if he or she wants to run for reelection.

## **E. The Number of Justices in a Precinct is Determined by Population**

The number of justices of the peace elected to each precinct is determined by the population of the county and precinct. Each precinct will have at least one justice of the peace who is elected from that precinct’s residents.

In a county with a population of 150,000 or more, each precinct may contain more than one justice of the peace. In a county of less than 150,000 people, there will be two justices of the peace for precincts that contain cities with 18,000 or more residents. *Texas Constitution Art. 5 §18(a)*.

## F. Election or Appointment to Office

### 1. Term Lengths Are Four Years

Each justice of the peace shall hold office for four years and until a successor is elected and qualified.

Justices of the peace appointed during a term will serve until the next general election.

### 2. A Justice of the Peace Does Not Have to be an Attorney

A justice of the peace is not required to be an attorney, but is required to attend a specific number of judicial training courses each year after taking office. [Education requirements are discussed on pages 118-119.](#)

### 3. Qualifications for Public Office

No matter how a justice is selected, he or she must meet the qualifications of the office, take the oath of office, and give a bond.

To be eligible to run for justice of the peace, a person must:

- Be a citizen of the United States,
- Be at least 18 years old on the first day the person takes office,
- Not have been determined to be mentally incapacitated by a final judgment of the court,
- Not have been convicted of a felony for which the person has not been pardoned,
- Have lived in the state for the twelve months immediately prior to the regular filing deadline,
- Have lived in the precinct where the justice court is located for the six months immediately prior to the regular filing deadline, and
- Satisfy any other eligibility requirements for the office.

*Election Code §141.001.*

### 4. Residency Requirements when Boundaries Have Changed

If a person is appointed, or is running for office, in a precinct where the boundaries are changed less than seven months before the filing deadline, the candidate or appointee must be a resident of the precinct he or she is running for on the date of the filing deadline, and must have lived in the county in which the precinct is located for six months immediately prior to the filing deadline. *Election Code §141.002.*

### 5. Disqualification for Giving a Bribe

A person is disqualified from holding any office of profit or trust, and therefore may not be a justice of the peace, if the person has been convicted of giving or offering a bribe to acquire their election or appointment. *Texas Constitution Art. 16 §5.*

### How long is my term?

Justices of the peace hold office for four years.

### Where does a JP have to live?

Justices must reside in the precinct where they're elected or appointed to serve at the time of election or appointment.

Justices must always reside in the county where they serve.



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## 6. Elected by the Voters

A justice of the peace is elected by the qualified voters of the precinct where the office is located.

### ***a. Majority of the Votes Required***

To be elected to a public office, a candidate must receive more votes than any other candidate for that office. *Election Code §2.001.*

### ***b. What Happens if there is a Tie?***

If two or more candidates for the same office tie for the number of votes required to be elected, a second election will be held.

Only the names of the tying candidates will be printed on the ballot for the second election. Write-in votes will not be permitted. *Election Code §2.002.*

### ***c. What if No Candidate Received Enough Votes?***

If no candidate receives the number of votes necessary to be elected, a runoff election is required. *Election Code §2.021.*

Candidates in a runoff election are the candidates who receive the highest and second highest number of votes in the main election, or who tie for the highest number of votes. *Election Code §2.023.*

### ***d. What if a Candidate Doesn't Have an Opponent?***

If a candidate running for justice of the peace does not have an opponent in the general election, the county clerk may declare the candidate elected to the office of justice of the peace if:

- That candidate is the only person whose name is to appear on the ballot for that office, and
- No other candidate's name is to be placed on a list of write-in candidates.

If a declaration is made, the election for that office is not held, and the name of the candidate is listed on the ballot as elected to the office.

The offices and names of any candidates declared elected will be listed separately on the ballot, under the heading "Unopposed Candidate Declared Elected" following the contested races. *Election Code §2.056.*

## 7. First Year Checklist

A checklist for surviving the first year in office can be found on the TJCTC website at <http://www.tjctc.org/tjctc-resources/publications.html#flowcharts>.

## G. Rules of Administration

The justices of the peace in each county shall, by majority vote, adopt local rules of administration. *Government Code §27.061.*

These rules are specific to each county and can be obtained from the commissioners court.



KEY  
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## H. Dual Office Holding

### 1. Dual Office Holding Allowed for Justices of the Peace

The Texas Constitution specifically allows a justice of the peace to hold two or more offices simultaneously without getting in trouble, known as dual office holding.

Justices of the peace are specifically exempted from the constitutional prohibition against holding, or exercising at the same time, more than one civil office of compensation. *Texas Constitution Art. 16 §40(a)*.

By statute, justices of the peace are automatically Ex Officio Notary Publics and Local Registrars for the Bureau of Vital Statistics as a result of their position as justice of the peace. These duties are discussed later in Chapter 3.

Justices can also serve as municipal judges for a city or town at the same time they serve as a justice of the peace.

### 2. Separation of Powers Doctrine

The separation of powers doctrine was created to prohibit giving one branch of government too much power. Each branch has certain powers and each power is checked by another branch of the government.

The separation of powers doctrine does not come into play when a justice of the peace holds or performs a second job that is part of the executive or legislative branch.

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It is only when the functioning of the judicial process is interfered with by either of those branches that a constitutional “separation of powers” problem arises. *Turner v. Trinity; Ruiz v. State.*

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### 3. The Doctrine of Incompatibility Might Prohibit Dual Office Holding

Even though the Constitution allows dual office holding, a justice of the peace desiring to hold more than one office must make sure the common law doctrine of incompatibility does not prohibit the employment.

The doctrine of incompatibility generally prohibits a person from holding two positions where one position might impose its policies on the other, or subject it to control in some other way.

There are three aspects to the doctrine of incompatibility:

- Self-appointment,
- Self-employment, and
- Conflicting loyalties.

## Automatic Dual Office Holding

Justices of the peace are automatically

- Ex Officio Notary Publics and
- Local Registrars for the Bureau of Vital Statistics

### **a. Self-appointment**

Self-appointment prohibits an individual from appointing himself or herself to another public position.

### **b. Self-employment**

Self-employment prevents one person from holding public office and having subordinate employment with an entity the public office supervises.

The fundamental consideration is whether the public office supervises the subordinate employment.

For example, a city manager cannot serve as police chief if, as city manager, he or she has supervisory authority over the police chief. *Tex. Att’y. Gen. Letter Opinion No. GA-0077 (2003)*.

### **c. Conflicting Loyalties**

Conflicting loyalties only applies when the two positions are both public offices. It prevents a person from holding two public offices whose duties are inconsistent or in conflict.

The determining factor which distinguishes a public officer from an employee is whether the individual exercises any sovereign function of government for the benefit of the public and largely independent of the control of others. *Tex. Att’y. Gen. Letter Opinion No. GA-0738(2009)*.

For example, the offices of justice of the peace and county commissioner are incompatible because they are both public offices, and the commissioners court is required to approve the accounts of the justice of the peace. Therefore, a justice of the peace could not be a member of the county commissioners. *Tex. Att’y. Gen. Letter Opinion No. 0-3576 (1941)*.

## **Conflicting Loyalties**

A justice of the peace cannot be a member of commissioners court because the offices are incompatible.

## **I. Oath of Office and Bond**

### **1. Bond**

Once elected, each justice of the peace must give a bond of not more than \$5,000, payable to the county judge, and conditioned that the justice will faithfully and impartially discharge the duties required by law, and promptly pay to the entitled party all money that comes into the justice’s hands during the term of office. *Government Code §27.001*.

### **2. Commissioned as Justice of the Peace and Ex Officio Notary Public**

Each justice of the peace shall be commissioned as justice of the peace of the applicable precinct and ex officio notary public of the county. *Government Code §27.002; Texas Constitution Art. 5 §19*.

The justice’s duties as an ex officio notary public are discussed in detail in Chapter 3.



KEY  
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### 3. Anti-bribery Statement Must Be Signed Before Taking the Oath of Office

Once elected or appointed, all justices of the peace, before taking the oath or affirmation of office and entering upon the duties of office, shall swear to and sign the following statement:

“I, \_\_\_\_\_, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised and public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.” *Tex. Constitution Art. 16 §1(b)*.

The signed statement shall be filed with the Secretary of State before the justice takes the oath or affirmation of office. *Texas Constitution Art. 16 §1(c)*.

### 4. Oath or Affirmation Must Be Taken Before Entering Upon the Duties of Office

All elected and appointed justices of the peace, before they enter upon the duties of their office, shall take the following oath or affirmation:

“I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of justice of the peace of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.” *Texas Constitution Art. 16 §1(a)*.



The Texas Court of Criminal Appeals has held that the acts of a judge who has not taken the oath of office are void. *French v. State*.

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No court has addressed the status of actions of a judge who has taken the oath of office but has not filed the statement with the Secretary of State. The Attorney General’s position is that the acts of a judge who has taken the oath of office but has not filed the written statement would probably be deemed valid. *Op. Tex. Att’y. Gen. No. LO 96-056(1996)*.

The [Anti-Bribery Statement](http://www.sos.state.tx.us/statdoc/forms) and the [Oath of Office](http://www.sos.state.tx.us/statdoc/forms) form can be found on the Secretary of State’s website at [www.sos.state.tx.us/statdoc/forms](http://www.sos.state.tx.us/statdoc/forms).

## J. Court Seal to be Furnished by the Commissioners Court

The commissioners court shall furnish to each justice of the peace a seal that has a star with five points in the center. The seal must also have “Justice Court, \_\_\_\_\_ County, Texas” and any applicable precinct number on it. *Government Code §27.059(a)*.

The seal may be attached to all process, other than subpoenas, issued out of the justice court, and may be used to authenticate the official acts of the justice clerk and the justice of the peace. *Government Code §27.059(b)*.

**What Can I Put the Seal On?**

All process, other than subpoenas, issued out of the justice court.

## K. Records and Other Property

### 1. Justice of the Peace as Records Custodian

The justice of the peace is the records custodian for his or her court. *Rules of Judicial Administration Rule 12.2(e)*.

### 2. A Justice Must Keep all Dockets, Books, and Papers Filed

Each justice shall arrange and safely keep all dockets, books, and papers transmitted to the justice by the justice's predecessors, and all papers filed in a case in justice court, subject to the public access requirements of Rule 12, Rules of Judicial Administration. *Government Code §27.004(a)*.

Public access to judicial records is discussed in Chapter 9 on page 121.

### 3. When a Justice Vacates Office

When a person vacates the office of justice of the peace, that person shall transfer all court records, documents, property, and unfinished business to their successor on the date the successor takes office. *Government Code §27.004(a-1)*.

After the transfer, court business must be completed by the successor justice as if the successor were the original justice of the peace. *Government Code §27.004(a-1)*.

### 4. Delivery of Documents Upon Demand

A person who has possession of dockets, books, or papers belonging to the office of any justice of the peace shall deliver those dockets to the new justice on demand. *Government Code §27.004(b)*.

If the person refuses to deliver them, the person may be attached and imprisoned by the order of a county judge until the person makes delivery, if a motion supported by an affidavit is filed. *Government Code §27.004(b)*.

**What do I do with court business that was pending when I came into office?**

Pending court business must be completed by a new justice of the peace as if the new justice was in office when the business was started.

## L. Holding Court

### 1. Commissioners Court Determines When to Hold Court

The commissioners court sets the time and place for holding justice court, and the justice of the peace must hold court at the justice's office at those times. *Government Code §27.051(b)*.

Each justice of the peace must hold court for civil and criminal business at least once each month. Court can go from day to day until all business is disposed of, or can be adjourned until a particular day. *Government Code §27.051(a)&(c)*.

Civil and criminal business can be handled on the same day or on separate days.



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## 2. Location of a Justice of the Peace's Office Determined by County Size

Location of a justice of the peace's office is determined by the size of the county where the justice precinct is located.

### **a. Precinct with More Than 75,000 People**

If the justice precinct in which the courthouse is located has more than 75,000 people, the commissioners court **must** provide and furnish a suitable place in the courthouse for the justice of that precinct to hold court. *Government Code §27.051(e)*.

### **b. Precinct with Fewer Than 30,000 People**

A justice of the peace of a precinct in a county with a population of less than 30,000 **may** hold court in the county courthouse or another facility provided for that purpose. *Government Code §27.051(f)*.

### **c. Commissioners Court May Provide a Place to Hold Court Upon Request**

When a commissioners court is not required to provide a place to hold court (as described above), the commissioners court **may**, if requested by the justice, provide and furnish a suitable place in the courthouse or another facility for the justice to hold court. *Government Code §27.051(f)*.

### **d. Commissioners Court Must Furnish Suitable Office Space and Equipment if Requested**

Upon request of a justice of the peace handling an average of 50 or more cases a month, the commissioners court **must** furnish the justice of the peace with suitable office space and necessary telephones, equipment, and supplies. *Local Government Code §291.004*.

### **e. Justice Court Can Be Located Outside the Precinct Under Certain Circumstances**

A justice court may not be housed in a building located outside the court's precinct unless:

- It's at the county courthouse of a county of less than 30,000 people, or
- It's inside the county courthouse in a county with a population between 275,000 and 285,000.

*Local Government Code §292.001(d)*.

### **f. A Municipality and a County Can Jointly Own a Building to be Used by the Justice of the Peace**

A building to be used by the justice of the peace may be jointly owned, constructed, equipped, enlarged, or maintained by:

- A municipality with a population of 2,000 or more which is located more than 10 miles from the county seat in which the municipality is located, and
- A county in which the municipality is located.

*Local Government Code §305.001*.

## Who provides me with a courtroom?

Commissioners court has the responsibility of providing a justice of the peace with a suitable place to hold court in most instances.



***g. Justice Court Can Be Located in a Branch Office in the Unincorporated Area of the County***



KEY  
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The commissioners court may purchase, construct, reconstruct, improve, equip, or provide by other means, a branch office in the unincorporated area of the county. *Local Government Code §292.030(a)*.

Any county officer may maintain an office there and the county may provide any county service at the branch office. *Local Government Code §292.030(b)*.

## **M. Clerk of the Court**

Each justice of the peace may designate one or more people to serve as justice court clerk. *Government Code §27.056(a)*.

### **1. A Justice Clerk Has No Authority to Act Independently**

Generally, a justice court clerk is considered a ministerial officer of the court who has custody of the court's records. *12 Tex. Jur. 3d, Clerks of Court §1 (1993)*.

A clerk has no authority to perform acts independently, but may assist the justice of the peace and act at the justice's discretion.

A clerk cannot exercise any judicial authority or do any act of a judicial nature that is required to be performed by a judge.

### **2. A Clerk Can't Be Involved in a Proceeding if They are an Interested Party**

A clerk should not participate in any way in an action if the clerk is party to that action or suit. *60 Tex. Jur. 3d Public Officers and Employees §149 (1988)*.

If the clerk performs the duties of office in a case where the clerk is an interested party, the proceedings are void.

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Clerks are subject to Texas Code of Judicial Conduct Canon 1 which requires them to uphold the integrity and independence of the judiciary. *Ethics Op. No. 106 (1987)*.

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### **3. Duties of the Justice Clerk**

As part of the clerk's duties, the clerk **must**:

- Maintain docket records for all cases filed in the justice court,
- Maintain an index of all court judgments for cases arising in the justice court,
- Assist the judge in handling matters before the court, and
- Perform other duties required by law.

*Government Code §27.056(c)*.



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A justice court clerk **may**:

- Administer oaths and affidavits,
- Make certificates,
- Affix the court's seal to certificates made by the clerk, and
- Issue citation in the manner provided for justices of the peace.

*Government Code §27.056(b) & §27.057.*

If a justice clerk is also a notary public, the clerk may take acknowledgments or proofs of written instruments. *Civil Practice and Remedies Code §121.001.*

An acknowledgment occurs when the signer of a document swears to a notary public that he or she signed the document, that he or she understands the document, and that he or she is aware of the consequences of executing the document.

A proof is a declaration made by a subscribing witness usually stating that he or she witnessed the signature of the signer of the document.

#### **4. Use of a Signature Stamp by a Clerk**

A clerk may use a stamp to place the justice of the peace's signature on court documents if:

- The justice authorizes its use,
- Is present in the building, and
- Is directing the clerk's actions.

*Att'y Gen. Op. No. JM-373(1985).*

#### **5. The Criminal Docket Must Be Posted at the Courthouse if it's Not Available Online**

If a justice court does not provide online internet access to their criminal case records, the justice clerk must post notice of a prospective criminal court docket setting as soon as the court notifies the clerk of the setting in a designated public place in the courthouse. *Code of Criminal Procedure Art. 17.085.*



## **N. Vacancy or Absence of a Justice of the Peace**

### **1. The Nearest Justice in the County Serves**

If the office of justice of the peace is vacant in a precinct, or if the justice is absent, unable, or unwilling to perform his duties, the nearest justice in the county may temporarily perform the duties of the office. *Government Code §27.052.*

### **2. A Vacancy is Filled by the Commissioners Court**

A vacancy in the office of justice of the peace will be filled by the commissioners court and the person appointed will serve until the next general election. *Texas Constitution Art. 5 §28.*

### **What if my clerk is not a notary?**

A clerk who is not a notary public may not take acknowledgments or proofs of written instruments.

The commissioners court shall fill a vacancy by a majority vote of the commissioner members who are present and voting. *Local Government Code §87.041.*

## O. Exchange of Benches

### 1. Justices May Exchange Benches in any County in Texas

A justice of the peace may hold court for any other justice of the peace in any Texas county at the request of that justice. *Government Code §27.054(a).*

### 2. Exchange of Benches is for Five Days

Justices may exchange benches for a period not to exceed five days at a time if the justices consider it beneficial to do so. *Government Code §27.054(b).* If so desired, the bench exchange agreement can be written so that it automatically renews every five days until one of the judges opts out of the agreement.

A bench exchange agreement can be found on the TJCTC website at <http://www.tjctc.org/tjctc-resources/forms.html> under “General Officeholding”.

### 3. No Compensation for Exchanging Benches

A justice who exchanges benches with another justice is not entitled to receive compensation from the commissioners court of the county in which the regular justice serves. *Government Code §27.054(c).*

### 4. Unavailability of a Justice to Conduct an Inquest

If a justice of the peace is not available to conduct an inquest into a person’s death occurring in that county, the justice of the peace of the precinct in which the death occurred may request a justice of the peace of another county to conduct the inquest. *Government Code §27.0545(a).*

A justice of the peace who conducts an inquest on request shall transfer all information related to the inquest to the justice of the peace of the precinct in which the death occurred for final disposition of the matter no more than five days after the date the inquest is initiated. *Government Code §27.0545(b).*

The justice of the peace with jurisdiction over the case signs the death certificate after getting all inquest information back from the justice who performed the inquest.

The justice who conducts the requested inquest is not entitled to receive compensation, other than mileage, from the commissioners court of the county in which the death occurred. *Government Code §27.0545(c).*

## Exchange of Benches

- Can be with another justice in any Texas County
- For up to 5 days at a time
- No compensation

## Inquests

- Can be done by another justice of the peace in any county
- Information must be transferred within five days
- Compensation only for mileage

An inquest bench exchange agreement can be found on the TJCTC website at <http://www.tjctc.org/tjctc-resources/forms.html> under the “Inquests”. For more information on this topic, refer to the Inquest Deskbook.

## P. Transfer of Cases

### 1. Justices Within the Same County Can Transfer Cases Back and Forth with Consent and Jurisdiction

Justices of the peace within the same county may transfer cases to and from the dockets of their respective courts; except that a case may not be transferred without the consent of the justice of the peace receiving the case, and the case may not be transferred unless the receiving court has jurisdiction. *Government Code §74.121(a)*.

### 2. Justices Can Swap Benches and Courtrooms Without Transferring the Case

Justices may swap benches and courtrooms with each other by going to the other justice’s location so that if one is absent, disabled, or disqualified, the other may hold court for him without the necessity of transferring the case. *Att’y. Gen. Op. No. H-671(1975)*.

Either justice may hear all or any part of a case, and may rule and enter orders on, continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. *Government Code §74.121(a)*.

### 3. Judgments are Entered in the Court Where the Case is Pending

Each judgment shall be entered on the docket of the court in which the case is pending. *Government Code §74.121(a)*.

### 4. Everything Issued by the Original Court is Returnable to the Court Accepting Transfer

When a case is transferred from one court to another, all processes, writs, bonds, recognizances, or other obligations issued from the transferring court are returnable to the court where the case is transferred as if originally issued by that court. *Government Code §74.121(c)*.

## Transfer of Cases

- Must be with justices in the same county
- Must be done with consent of the receiving justice
- The receiving court must have jurisdiction

## Q. Special and Temporary Justices

### 1. If A Justice Can’t Hear a Case, the Parties May Agree on Someone to Try the Case

Parties to a case may agree on a person to try their case if the justice of the peace who has jurisdiction of the case is sick, absent from the precinct, or is disqualified from hearing the case. *Government Code §27.055(a)*.



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## 2. A Qualified Person Will Be Appointed to Hear the Case if the Parties Can't Agree

If the parties can't agree on a person to hear their case at the first court setting after service is perfected, the county judge shall appoint a qualified person to try the case upon request of the justice or either party. *Government Code §27.055(a)*.

The disqualified justice may also certify their disqualification to the county judge and request appointment of another person. *Barta v. Loessin*.

"Qualified person" means a person who has served as a justice of the peace for not less than 4 ½ years (but does not have to be currently serving) and who has not been convicted of a criminal offense that involves moral turpitude. *Government Code §27.055(c)*.

## 3. If a Qualified Person Can't Be Found, A Qualified Voter May Be Appointed

The county judge may appoint any qualified voter to serve as temporary justice of the peace if the judge cannot find a qualified person who agrees to serve. *Government Code §27.055(e)*.

## 4. Appointment of a New Justice of the Peace Must Be Noted on the Docket

The disqualification, absence, or illness of the justice, and the selection by agreement or appointment of another person to try the case must be noted on the docket. *Government Code §27.055(a)*.

## 5. A Temporary Justice Can Serve for the Duration of a Justice's Absence

If a justice is temporarily unable to perform official duties, the county judge on his own motion, or at the request of the justice of the peace, may appoint a qualified person to serve as temporary justice for the duration of the justice of the peace's absence from the bench. *Government Code §27.055(b)*.

## 6. Temporary Justices Are Paid the Same as the Judge They Are Filling in For

The temporary justice will be paid by the commissioners court by the day, week, or month as applicable, in an amount equal to the pay of the regular justice. *Government Code §27.055(b)*.

## 7. Powers of Temporary Justices

A temporary justice has all the rights and powers of the justice of the peace while serving in that capacity, but may not make personnel decisions about, or significant changes in, the justice of the peace's office. *Government Code §27.055(b)*.

### Moral turpitude:

Something that is inherently immoral or dishonest, such as theft or swindling.

*Hardeman v. State;*  
*Huston v. State.*

### Temporary Justices

- Serve for the duration of an absence,
- Appointment must be noted on the docket,
- Are paid the same,
- Have the same powers as the regular justice, and
- Can live in any county

## 8. Temporary Justices Can Live in Any County

A temporary justice does not have to reside in the county where the person is appointed as temporary justice of the peace. *Government Code §27.055(d)*.

## 9. Temporary Justices Appointed to Dispose of Accumulated Court Business

In a county with a population greater than 800,000 and with no more than five justices of the peace, the county judge may appoint a qualified person to serve as a temporary justice of the peace to hold court when necessary to dispose of accumulated business in the precinct. *Government Code §27.055(f)*.

The county judge may appoint a qualified person to serve as a temporary justice of the peace for the precinct in which a municipality or part of a municipality is located, to hold court and perform justice of the peace duties when necessary to dispose of accumulated business. This only applies in a county:

- Less than 940 square miles in size,
- With a population between 120,000 and 130,000 people,
- That includes a state park, and
- That has no more than two justice precincts, so long as at least one of the precincts contains all or part of a municipality with a population between 190,000 and 200,000.

*Government Code §27.055(g)*.

## R. Temporary Replacement of Public Officer on Military Active Duty



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An elected or appointed officer of the state who enters active duty in the military as a result of being called to duty, drafted, or activated, does not vacate the office held. *Texas Constitution Art. 16 §72(a)*.

### 1. Temporary Justice Appointed if the Active Duty Term is More Than 30 Days

While the justice is serving in the military, the appropriate authority may appoint a replacement to serve as temporary justice of the peace, if the justice will be on active duty for longer than thirty days. *Texas Constitution Art. 16 §72(a)*.

A temporary justice of the peace shall perform the duties of office for the justice of the peace's term of active military service, or for the remaining term of office; whichever is shorter. *Texas Constitution Art. 16 §72(g)*.

### 2. Compensation and Powers of a Temporary Justice

A temporary justice of the peace has all the powers, privileges, and duties of the office and is entitled to the same compensation, payable in the same manner and from the same source, as the justice of the peace who is temporarily replaced. *Texas Constitution Art. 16 §72(f)*.

## S. Declining Compensation

### 1. Remuneration Can Be Declined

A justice of the peace may decline remuneration, or compensation, associated with the office. Remuneration includes:

- Salary,
- Compensatory per diem,
- Reimbursement for expenses,
- Longevity pay, and
- Fees.

*Government Code §659.003(a)-(b).*

### 2. How to Decline Remuneration

To decline remuneration, the justice must execute a declination form created by and filed with the Secretary of State.

The form allows a person to decline all remuneration or to decline particular remuneration from among various types associated with the office. *Government Code §659.003(b).*

### 3. Effective Date of Declination

A declination is effective on the date it is filed with the secretary of state. *Government Code §659.003(c).*

### 4. Revocation of a Declination

A declination filed after an officer has qualified for office may be revoked at any time. *Government Code §659.003(d).*

A declination filed before a person has qualified for office may not be revoked during the term of office to which the person is appointed or elected. *Government Code §659.003(d).*

A person who has irrevocably declined remuneration is considered not compensated for purposes of state law. *Government Code §659.003(e).*

**Form 2207, the Remuneration Declaration Form, can be found on the Secretary of State's website at <https://www.sos.state.tx.us/statdoc/forms/2207.pdf>.**

### Revocation of a declination

The ability to revoke a declination depends upon when a justice of the peace filed the form the Secretary of the State.

## **T. Additional Rules for Harris County Justice Courts**

Government Code Section 75.404 sets out additional rules that apply to Harris County justice courts only.

### **1. Selection of a Presiding Judge**

In Harris County, the justices of the peace may select a presiding judge from among themselves. The presiding judge is selected by a two-thirds vote the month before the term he will serve, and serves a one-year term unless two-thirds of the judges vote to cancel the current presiding judge selection and another judge is selected to serve the unexpired term. *Government Code §75.404(a)*.

The presiding judge shall:

- Preside at any session of the judges,
- Keep a record of the decisions of the judges,
- Appoint special or standing committees necessary for court management and administration,
- Implement local rules, including assignment, docketing, transfer, and hearings of cases, and
- Provide statistical and management information requested by the Supreme Court or Office of Court Administration of the Texas Judicial System

*Government Code §75.404(d)*.

### **2. Appointment of a Special Judge to Assist a Qualified Person**

If a Harris County justice of the peace is absent, or for any reason unable to preside, the presiding judge may appoint a special judge, in addition to a qualified person authorized by law, to preside for the justice of the peace. *Government Code §75.404(e)*.

#### ***a. Who Can Be Appointed as a Special Judge?***

A special judge must consent to the appointment and may be a former:

- Justice of the peace,
- County court judge,
- Statutory county court judge, or
- District court judge.

*Government Code §75.404(e)*.

#### ***b. Duration of Appointment of a Special Judge***

The presiding judge may designate the duration of the appointment, but appointment cannot exceed 60 days. The presiding judge may revoke an appointment at any time. *Government Code §75.404(e)*.

#### ***c. Duties and Powers of a Special Judge***

The duties and powers of a special judge are the same as for the regular justice of the peace. The special judge may be compensated by the commissioners court. *Government Code §75.404(e)*.



## CHAPTER 3: OTHER DUTIES AND POWERS OF A JUSTICE OF THE PEACE

In addition to serving as judge of the justice court, a justice of the peace has other duties and powers simply because he or she has been elected as justice of the peace.

These duties and powers include the ability to hold people in contempt, being an Ex Officio Notary Public, being the local registrar for the Bureau of Vital Statistics, performing wedding ceremonies, and collecting money for the county.

### A. Contempt Powers

Government Code Section 21.002 is the main statutory authority on contempt, however contempt in Texas is largely governed by common law.

#### 1. General Contempt

##### *a. Types of Contempt and Punishment Orders*

There are two types of contempt:

- Direct contempt and
- Indirect contempt, which is also referred to as constructive contempt.

There are two types of punishment that justices of the peace can order:

- A punitive (or criminal) contempt order, or
- A coercive (or civil) contempt order.

The types of contempt and the punishment ordered deal with how the contempt was committed and the justice's purpose for imposing the punishment.

##### *b. Direct Contempt*

Direct contempt is behavior that occurs in the presence of the court. It is behavior of which the judge has personal knowledge because the judge either saw it or heard it.

##### *i. What is "in the Presence of the Court"?*

In the presence of the court generally means whenever the court is in session. It includes any essential parts of the court that are engaged in court business.

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Areas such as the jury room, adjoining holdover cells, or even the hall may, depending on the circumstance, be considered part of the court for contempt purposes. *Ex parte Aldridge.*

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A special court of review has held that direct contempt cannot occur if the acts takes place in the presence of the judge, but at a time when court is not in session, and the judge is not acting as the court. A party may be held in contempt during trial for exhibiting contemptuous behavior, appearance, conduct, or expressions which exhibit disrespect for the court's ruling and orders. *Ex parte Sentell*.

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## ***ii. Examples of direct contempt***

Direct contempt includes:

- Outbursts by anyone participating in the trial, including officers of the court,
- Disruptive behavior by those observing the trial,
- Violating direct orders of the judge made in an attempt to maintain order or ensure a fair trial to the litigants,
- Repeatedly arguing or asking a question designed to elicit inadmissible evidence, despite a previous order from the judge to stop, and
- Attempts to bribe or improperly influence a juror, committed in the presence of the court.

## ***iii. Punishment Usually Happens Immediately***

Punishment usually happens immediately after the contempt occurs. Since the contempt occurred in the presence of the judge, the offending person does not need to be given formal notice of the violation. This summary finding of guilt and immediate imposition of punishment allows the court to instantly maintain order.

## ***iv. When Punishment Can't Happen Immediately***

Direct contempt may not be punished immediately if there is not a specific immediate need to do so. For example, when contempt occurs after the hearing is over. Even though contempt occurred in the justice's presence, immediate punishment is not necessary to maintain order. In this situation, notice and a hearing is required before the contemptuous act can be dealt with.

## ***c. Constructive (Indirect) Contempt***

Constructive, or indirect, contempt is when the alleged bad act occurs outside the presence of the court and the court did not see the bad act happen.

### ***i. Example of Constructive Contempt***

Constructive contempt occurs when a court order is not followed.

### ***ii. Disobedience Must Be Willful***

A person accused of contempt, or the contemnor, must have willfully disobeyed the court's order for an act to constitute constructive contempt. The original court order the contemnor was supposed to abide by must be clear, specific, unambiguous, and in writing. Oral orders do not meet the specificity required to hold someone in contempt. *Ex parte Slavin*.

**Contemnor:**

A person accused of contempt.

### **iii. Notice Required**

Before a finding of constructive contempt, the accused is entitled to written notice of how, when, and by what means the party committed the alleged contempt.

### **iv. Opportunity for Hearing Required**

At a show cause hearing, guilt of the alleged contemptuous act must be proven beyond a reasonable doubt. An evidentiary hearing must be held to allow the accused an opportunity to present any defenses, or the accused must waive their rights. Due process must be satisfied at the hearing.

The accused has the right to hire and be represented by counsel, and the right against self-incrimination, but does not have a right to a jury trial. The accused does not have a right to have counsel appointed for them if they can't afford to hire an attorney.

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The accused has a right to obtain counsel before being confined in a matter involving constructive contempt. *Ex parte DeLeon; Ex parte Knable; Ex parte Woodyard.*

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### **v. The Right to be Present at the Hearing is Fundamental**

The right of an accused to be present at the hearing is fundamental. A justice of the peace may not enter a finding of indirect contempt until the alleged contemnor appears before the court. "Appearing before the court" does not necessarily mean being physically present, and the hearing requirement may be satisfied by affidavits. The court is required to give the contemnor an opportunity to explain his behavior, but there is no requirement to hold a live hearing.

If the contemnor fails to appear after proper notice, the proper procedure is to issue an attachment, and hold a hearing once the contemnor is brought before the court.

### **vi. A Contemnor has a 5<sup>th</sup> Amendment Privilege Against Self-Incrimination**

The contemnor has a 5<sup>th</sup> Amendment privilege against self-incrimination, and failure to invoke the privilege constitutes a waiver of that privilege.

### **d. Contempt by an Officer of the Court**

If the contemptuous act is done by an officer of the court, notice must be given and a hearing must occur before a different judge regardless of whether the contempt is direct or indirect.

#### **i. Who are Officers of the Court?**

Officers of the court include, but are not limited to:

- Attorneys representing clients or the state,
- Court reporters,
- Court clerks,
- Bailiffs,
- Probation officers,
- Guardian ad litem, and
- Law enforcement officers with legal duties.

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An officer of the court is a person who has responsibility for, and upon whom, the court relies for the functioning of the court and enforcing of its orders. *Merritt v. Harris County*.

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### **ii. Release of Officer Who is Held in Contempt**

An officer of the court who is held in contempt shall be released on his or her own personal recognizance while a determination of his guilt or innocence is pending, if a proper motion is filed in the court where the contempt occurred.

### **iii. Who Hears and Determines the Guilt or Innocence of an Officer of the Court?**

A judge, other than the judge from the court where the contempt occurred, will be assigned to hold a hearing and determine the guilt or innocence of the officer of the court charged with contempt. *Government Code §21.002(d)*.

It is mandatory that the justice of the court where the contempt occurred notify the presiding judge of the administrative judicial district for the county affected that appointment of a judge is needed to conduct the hearing on guilt or innocence of a court officer charged with contempt.

### **iv. An Attorney Who Takes the Witness Stand Loses His or Her Status as an Officer of the Court**

When an attorney takes the witness stand to testify, the attorney's status as an officer of the court is lost. The attorney becomes a witness subject to being held in direct contempt, and the special procedures for an officer of the court do not have to be followed. *Ex parte Howell*.

### **e. Contempt Orders**

Both direct and indirect contempt can be punished as punitive contempt or coercive contempt. Designations of punitive and coercive contempt have no relationship to the kind of case during which the contempt occurs, it has to do with the type of punishment given by the judge.

#### **i. Punitive Contempt Orders**

Punitive, or criminal, contempt orders are solely to punish the contemnor for his behavior or for an act done by him. Direct contempt and constructive contempt can both result in punitive contempt orders.

Punitive contempt orders are unconditional in that the punishment remains even if the contemnor later complies with the original court order.

Punishment in the justice court can be:

- \$100 fine,
- Up to three days in jail, or
- Both fine and confinement.

*Government Code §21.002(c); Ex parte Werblud.*

### **What if a bailiff isn't doing their job in court?**

An officer of the court may be held in contempt for failing to perform the officer's duties. *Kreugel v. Williams*.

## **ii. Coercive Contempt Orders**

Coercive, or civil, contempt orders seek to remedy a violation and encourage obedience with a court order. The contemnor must obey the court order or remain in jail until he or she obeys. In addition to confining a person to jail until they obey, the judge can also impose punishment.

Punishment in the justice court can be:

- A fine,
- Jail time, or
- Both and fine and confinement.

Jail time can be for a set period of time or an open-ended amount of time with a maximum period of 18 months from the date of confinement to the date the person complies with the court order. The contemnor should be given a final opportunity to comply with the court order before being committed to jail.

Coercive contempt orders are conditional in that the contemnor may escape the sentence by complying with the original court order. The contemnor *“holds the keys to the jail”* because the contemnor will be released whenever he or she decides to obey the order.

### **iii. A Contempt Order Can Be Both Punitive and Coercive**

A contempt order can be both punitive and coercive if it contains elements of each. An example would be to jail a lawyer for three days for failing to comply with a discovery order and ordering him to remain in jail until he provides discovery.

The order is punitive because the lawyer is being punished by being sent to jail for three days for not giving discovery. It is also coercive because the lawyer is being sent to jail until he complies with the discovery order that he initially ignored in an effort to encourage compliance with the order.

### **iv. A Contemnor May Be Detained While the Contempt Order is Being Prepared**

A contemnor may be detained by the bailiff or sheriff while the justice of the peace prepares the written judgment of contempt and signs the order of commitment. A person can only be detained for a reasonable amount of time.

### **v. The Judgment**

The essential elements of the judgment:

- It must be in writing,
- Contain all the necessary facts to show that the subject matter of the underlying contempt was within the jurisdiction of the court,
- Contain the facts and allegations of the contempt in definite and specific terms, not merely a conclusory statement that the accused was held in contempt, and

## **Punitive V. Constructive Contempt**

**Punitive:** seeks to punish the contemnor for his behavior or for an act done by him.

**Coercive:** seeks to remedy a violation and encourage obedience with a court order.

- Contain an order of commitment where the contemnor is committed to the county jail. If a commitment order is not contained in the judgment, a separate order of commitment must accompany the judgment.

*Ex parte Calbrillo Amaya; Ex parte Ustick; Ex parte McGraw; Ex parte Mackin.*

The reason for specificity in the judgment is to satisfy the requirement that the contemnor be fully apprised of the act of misconduct. *Ex parte Hart.*

### **vi. The Contempt Order**

The contempt order must:

- Fully and specifically describe the contemptuous act,
- Clearly state the specific number of days or hours of jail time assessed,
- State any fine assessed,
- Direct the bailiff to take the contemnor into custody, and
- If applicable, specifically spell-out how the contempt can be removed through compliance with the judge’s orders.

### **vii. Sample Contempt Judgments and Orders**

Sample judgments and orders for direct and constructive contempt can be found on the TJCTC website at <http://www.tjctc.org/tjctc-resources/forms.html> under “General Officeholding”

## **2. Juvenile Contempt**

Justices of the peace can hold juveniles in contempt, but juveniles are subject to different rules than adults.

Juvenile contempt rules are found in Article 45.050, Code of Criminal Procedure and are discussed in the Juvenile Deskbook.

### **a. No Confinement for Failure to Pay Fines or Costs**

A justice or municipal court may not order a child to be confined for failure to pay all or any part of a fine or costs imposed for:

- Conviction of an offense punishable by fine only,
- Failure to appear for an offense committed by the child, or
- Contempt of another order of a justice or municipal court.

*Code of Criminal Procedure Art. 45.050(b).*

### **b. Notice and an Opportunity to be Heard Required**

### **Statement of facts:**

Bad (not enough specificity): “Joe Jones committed an act in the presence of the court for which he was held in contempt”

Good: “Joe Jones did then and there use abusive, disrespectful, and discourteous language which disrupted the orderly proceeding of the court.”



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If a child fails to obey a justice or municipal court order in a way that constitutes contempt, the justice or municipal court must provide notice and an opportunity to be heard to the child. *Code of Criminal Procedure Art. 45.050(c)*.

### **c. Court Options if a Child Fails to Obey a Court Order**

If a child fails to obey a court order in a way that constitutes contempt, the justice or municipal court may, after notice and hearing:

- Refer the child to the juvenile court for delinquent conduct, or
- Retain jurisdiction of the case.

*Code of Criminal Procedure Art. 45.050(c)*.

### **d. If the Court Retains Jurisdiction**

If the justice or municipal court retains jurisdiction and holds the child in contempt, the court can:

- Order the child pay a fine not to exceed \$500,
- Order the Department of Public Safety to suspend or deny issuance of the child's driver's license or permit until the child fully complies with the orders of the court, or
- Order both of the above.

A court that orders suspension or denial of a driver's license or permit must notify the Department of Public Safety when they receive proof of compliance with the orders of the court. *Code of Criminal Procedure Art. 45.050(c)*.

### **e. What if Contempt Occurred When the Child Was Younger Than Seventeen but Is Now Over Seventeen?**

A justice or municipal court may hold a person older than seventeen in contempt and impose a remedy if the person committed contempt of court while younger than seventeen, but contempt proceedings could not be held before the person's seventeenth birthday. *Code of Criminal Procedure Art. 45.050(e)*. Even though the contemnor is now an adult, the court must follow juvenile contempt rules, not adult contempt rules.

A justice or municipal court may not refer a child age seventeen or older who violates a court order to a juvenile court for delinquency proceedings for contempt of court. *Code of Criminal Procedure Art. 45.050(g)*.

## **3. Property Code Contempt**

In addition to general contempt, justices of the peace can also hold someone in contempt under Chapter 92 of the Property Code when a person fails to obey a writ of reentry or writ of restoration. *Property Code §92.009; 92.0091*.

These special provisions expressly authorize a justice of the peace to order a landlord to sit in jail until the order is obeyed when the landlord disobeys a writ to either restore utilities or allow reentry. For more information, refer to pages 74-75 and 79-80 of the Evictions Deskbook.

## **What happens if a child commits contempt?**

Justice court can:

- Refer the child to the juvenile court for delinquent conduct
- Retain jurisdiction of the case



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### ***a. Failure to Comply with a Writ of Reentry or Writ of Restoration is Constructive Contempt***

If a writ of reentry or a writ of restoration of utility service is served on a landlord or other person and the person served fails to immediately comply with the writ, or later disobeys the writ, that person has engaged in constructive contempt.

### ***b. Affidavit to be Filed if the Writ is Disobeyed***

If the writ is disobeyed, the tenant or the tenant's attorney may file in the court in which the reentry action is pending an affidavit stating:

- The name of the person who has disobeyed the writ, and
- Describing the acts or omissions constituting the disobedience.

On receipt of an affidavit, the justice shall issue a show cause order directing the person to appear on a designated date and show cause why he should not be held in contempt of court. *Property Code §92.009(i); 92.0091(i).*

### ***c. Commitment Upon Finding That a Writ Has Been Disobeyed***

If the justice finds that the person has directly or indirectly disobeyed the writ, the justice of the peace may commit the person to jail until the person complies with the writ.

If the person disobeyed the writ before receiving the show cause order, but complied with the writ after receiving the order and before the hearing, the justice may still find the person in contempt and assess a \$100 fine, confinement for not more than three days, or both. *Property Code §92.009(i); 92.0091(i).*

## **4. Contempt as a Last Resort**

### ***a. Contempt Orders Cannot Be Appealed***

A judgment holding a person in contempt of court cannot be appealed. The only remedy is by writ of habeas corpus. *Medearis v. Medearis.*

### ***b. Imprisonment is Serious***

Imprisonment for contempt is serious and should be used sparingly. Before confining someone, the justice should consider if there are there other options the court may employ to get the same results. Imposition of a fine is usually enough, and often the threat of confinement is more than sufficient to get compliance with a court order.

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The right of a judge to punish for contempt is not given for the private advantage of the judge, but to preserve the respect due the court. In exercising this authority, the judge should act to redress a public wrong, not seek revenge for private grievances.

*Ex parte Davis.*

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### ***c. Contempt Not Appropriate Where There Are Other Remedies***

Contempt should not be used in situations where other remedies exist to specifically address an action.

#### ***i. Deferred Disposition Violations***

In a case where a defendant is given deferred disposition there is no need to hold someone in contempt for a violation of the deferred terms because a violation of a deferral order results in a conviction.

#### ***ii. Failure to Attend Alcohol Awareness Class***

Failure to attend a required alcohol awareness course can lead to a person's driver's license being suspended.

#### ***iii. Failure to Pay Fines and Costs***

Failure of an adult to pay fines and costs can result in the issuance of a Capias Pro Fine, being entered into OMNI, and/or being referred to collections.

### **Should I Hold Someone in Contempt?**

Contempt is serious and should be used as a last resort.

If other remedies exist to address a situation, use those remedies.

## **B. Ex Officio Notary Public**

### **1. A Justice of the Peace is Automatically an Ex Officio Notary Public**

When a justice of the peace is elected or appointed, he automatically becomes an ex officio notary public because ex officio means by virtue of the office. *Texas Constitution Art. 5 §19; Government Code §27.002; Black's Law Dictionary (8th ed. 2004).*

### **2. No Bond or Oath Required**

When a person has qualified as justice of the peace of a precinct, the justice is not required to take the oath or give the bond required of a notary public in order to serve as ex officio notary public. *Att'y. Gen. Op. No. O-5606 (1943); Att'y. Gen. Op. No. O-84 (1939).*

### **3. An Ex Officio Notary Public is Governed by the Same Statutes as a Notary Public**

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The authority of an ex officio notary public is the same as that of an ordinary notary public. *Wilson v. Simpson.*

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A justice of the peace serving as ex officio notary public must, when acting as a notary, conform to the statutes governing notary publics. *Government Code §§ 406.001- 406.025.*



#### 4. An Ex Officio Notary Public Can't Notarize an Instrument He or She Is a Party To

If an ex officio notary public is an interested party to an instrument being signed, the ex officio notary is disqualified from notarizing it. *Terrell v. Chambers; Morris v. Dunn*. Generally, an ex officio notary is disqualified if the ex officio notary has a financial or beneficial interest in the transaction, no matter how small the interest. *Creosoted Block Paving Co. v. McKay; Morris v. Dunn*.

#### 5. How Long Does a Justice Serve as an Ex Officio Notary Public?

An ex officio notary public serves for the duration of their term of office as justice of the peace, so long as he or she does not permanently move from their precinct. *Government Code §406.021*.

When a justice of the peace leaves office, or the justice's term expires, the justice of the peace no longer has authority to serve as ex officio notary public because the authority to do so derives from holding office as justice of the peace.

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A ex officio notary does not perform a judicial function but acts in a ministerial capacity. *Kosminsy v. Raymond*.

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#### 6. Ex Officio Notary Public Duties Are Separate from Justice of the Peace Duties

The acts of an ex officio notary public are separate and distinct from the duties of justice of the peace.

#### 7. Authority to Take Acknowledgments or Proofs of Written Instruments

An ex officio notary public has the same authority as the county clerk to:

- Take acknowledgments or proofs of written instruments,
- Protest instruments permitted by law to be protested,
- Administer oaths,
- Take depositions, and
- Certify copies of documents not recordable in the public records.

*Government Code §406.016*.

An acknowledgment occurs when the signer of a document swears to a notary public that he or she signed the document, that he or she understands the document, and that he or she is aware of the consequences of executing the document.

A proof is a declaration made by a subscribing witness usually stating that he or she witnessed the signature of the signer of the document.

#### 8. Authority to Make a Certificate of Dishonor

An ex officio notary may make a certificate of dishonor, or protest, that a negotiable instrument has been dishonored. *Business and Commerce Code §3.505(b)*.

### Acknowledgments and proofs:

Acknowledgment: when the signer of a document swears to a notary public that he or she signed the document.

Proof: declaration made by a subscribing witness usually stating that he or she witnessed the signature of the signer of the document.

## 9. Statewide Jurisdiction to Perform Notary Functions

An ex officio notary public has statewide jurisdiction and may perform notary functions anywhere within the boundaries of Texas. *Government Code §406.003.*

## 10. Oaths Made in Texas

An oath made in Texas may be administered, and a certificate of the fact given by:

- A justice of the peace,
- A clerk of a justice court, or
- A notary public / ex officio notary public.

## 11. Oaths Made Outside Texas

An oath made outside Texas but within the United States or its territories may be administered and a certificate of the fact given by an ex officio notary public.

## 12. Ex Officio Notary Public Not Responsible for Filing a Notarized Instrument

It is not the duty of the ex officio notary to forward a notarized instrument to the county clerk for filing, but rather the duty of the person requesting notarization. *Sitton v. American Insurance Co.*

## 13. Proof of Identity of Person Requesting Notary Services

An ex officio notary public may not take the acknowledgment of a written instrument unless he or she knows, or has satisfactory evidence, that the acknowledging person is the person who signed the instrument and is described in it. *Civil Practice and Remedies Code §121.005(a).*

### ***a. How Identity Can be Established***

Proof of identity may be established by:

- Personal knowledge by the ex officio notary public of the person signing,
- The oath of a credible witness known to the ex officio notary, that the person signing is who he says he is, or
- By a current identification card issued the federal or any state government that contains a photo and signature of the person.

*Civil Practice and Remedies Code §121.005(a).*

### ***b. Method of Proof Must Be Documented***

An ex officio notary public must note in the certificate of acknowledgment:

- That the ex officio notary personally knows the acknowledging person,
- That evidence of a witness was used to identify the acknowledging person, or

**How do I know if the acknowledging person and the person who signed the instrument are the same person?**

Proof of identity can be established by

- Personal knowledge of the ex officio notary public,
- Oath of a credible witness, or
- An ID card

- That an identification card or other document was used to identify the acknowledging person.

This information is not required in a short form certificate of acknowledgment authorized by Section 121.008 Civil Practice and Remedies Code. *Civil Practice and Remedies Code §121.005(b)*.

#### **14. Signing a Document for an Individual with a Disability**

An ex officio notary may sign the name of an individual who is physically unable to sign or make a mark on a document presented for notarization if:

- The ex officio notary is directed to do so by that individual, and
- The individual and the ex officio notary public are in the presence of a witness who has no legal or equitable interest in any real or personal property that is the subject of, or is affected by, the document being signed.

*Government Code §406.0165(a)*.

##### ***a. Additional Notation to be Made by the Ex Officio Notary Public***

Beneath the ex officio notary’s signature, the ex officio notary must write the following or a substantially similar sentence: "Signature affixed by notary in the presence of (name of witness), a disinterested witness, under Section 406.0165, Government Code." *Government Code §406.0165(b)*.

##### ***b. A Signature by the Ex Officio Notary is an Official Signature***

A signature made under Section 406.0165, Government Code is effective as the signature of the individual on whose behalf the signature was made for any purpose. A subsequent bona fide purchaser for value may rely on the signature of the notary as evidence of the individual's consent to execution of the document. *Government Code §406.0165(c)*.

#### **15. Use of a Notary Seal to Authenticate Official Acts of the Ex Officio Notary Public**

An ex officio notary public shall authenticate all official acts with the seal of office. *Government Code §406.013(a)*.

Because the offices of justice of the peace and ex officio notary public are separate and distinct, the court seal is to be used when acting as a justice of the peace, and the notary seal is to be used when acting as ex officio notary public.

##### ***a. Wording Required to be on the Notary Seal***

The seal, whether embossed, stamped, or printed, shall clearly show:

- The words “Notary Public, State of Texas” around a five-point star,
- The ex officio notary’s name, and
- The date the ex officio notary public’s commission expires.

*Government Code §406.013(a)*.

#### **Which Seal Do I Use?**

The court seal is to be used when acting as a justice of the peace.

The notary seal is to be used when acting as ex officio notary public.

Immediately under the ex officio notary's name, write the words "Justice of the Peace and Ex Officio Notary Public." The commission expiration date is the date when the justice's elected term of office ends.

#### ***b. Size and Shape of the Notary Seal***

The shape of the seal may be:

- A circular form not more than two inches in diameter, or
- A rectangular form not more than one inch in width by two and one-half inches in length.

The seal must have a serrated or milled edge border. *Government Code §406.013(b)*.

#### ***c. A Seal Press or Stamp with Permanent Ink Must Be Used***

A seal press or stamp with permanent ink must be used to affix the seal, and the required elements of the seal have to be legibly reproduced when being copied or scanned in order to authenticate the ex officio notary public's official act. *Government Code §406.013(c)*. For an electronically transmitted authenticated document, the document must legibly reproduce the required elements of the seal. *Government Code §406.013(d)*.

#### ***d. Form of an Ordinary Certificate of Acknowledgment***

The form of an ordinary certificate of acknowledgment must be substantially as follows:

"The State of \_\_\_\_, County of \_\_\_\_, "Before me \_\_\_\_ (here insert the name and character of the officer) on this day personally appeared \_\_\_\_, known to me (or proved to me on the oath of \_\_\_\_ or through \_\_\_\_ (description of identity card or other documents) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that executed the same for the purposes and consideration therein expressed. (Seal) "Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_, A.D., \_\_\_\_." *Civil Practice and Remedies Code §121.005(b)*.

A sample certificate of acknowledgment can be found on the TJCTC website at <http://www.tjctc.org/tjctc-resources/forms.html> under "General Officeholding."

### **16. What Happens if a Notary Seal is not Attached to an Instrument?**

If an ex officio notary public fails to attach an official notary seal to a certificate of an acknowledgment, proof of a written document, or other proof made outside Texas but within the United States or its territories, the document is invalid only if the jurisdiction in which the document is made or taken requires the notary public to attach the seal. *Civil Practice and Remedies Code §121.004(c)*.

### **17. Reporting, Record Keeping, & Fees**

Reporting, record keeping requirements, and fees associated with a justice of the peace's service as ex officio notary public are discussed on [pages 47, 48, and 62](#).

## **C. Local Registrar for the Bureau of Vital Statistics**

### **1. State Divided into Registration Districts**

The state is divided into registration districts for the purposes of registering births, deaths, and fetal deaths. Each justice of the peace precinct and municipality with a population of 2,500 or more is a registration district. *Health and Safety Code §191.021(a)*. To facilitate registration, the Department of State Health Services may combine or divide registration districts *Health and Safety Code §191.021(b)*.

### **2. A Justice of the Peace is the Local Registrar for Their Precinct**

A justice of the peace is the local registrar of births and deaths in their precinct. The duty of registering births and deaths may be transferred to the county clerk if the justice of the peace and the county clerk agree in writing, and the agreement is approved by the commissioners court. *Health and Safety Code §191.022(a)*.

### **Am I a local registrar?**

Most justices of the peace are not the local registrar for their precinct because agreements have been entered into with the county clerk transferring that duty.

### **3. Deputy Registrars to be Appointed**

Each local registrar shall appoint a deputy registrar so that a registrar will be available at all times for the registration of births and deaths *Health and Safety Code §191.022(c)*.

### **4. Failure or Refusal to Register Births and Deaths**

If a local registrar fails or refuses to register each birth and death in the district and neglects duties, the county judge or mayor shall appoint a new local registrar. *Health and Safety Code §191.022(e)*.

### **5. Delay in Filing a Birth Certificate Allowed Due to Religious Reasons**

A parent may request that a person required to file a birth certificate or report a birth, delay filing the certificate or making the report until the parent contacts that person with the child's name, if the delay in naming the child is due to the parent's religious beliefs. If the parent does not name the child within four days, the parent must contact the person required to file the birth certificate or report the birth with the child's name as soon as the child is named.

A person required to file the birth certificate or report the birth who delays filing in accordance with the parent's request, must file the certificate or make the report no later than 15 days after the child's birth, regardless of whether or not the parent has contacted them and provided the child's name. *Health and Safety Code §192.003*.

### **6. Local Registrar Must Sign Each Report**

The local registrar must sign each report made to the Department of State Health Services. *Health and Safety Code §191.022(d)*.

## 7. Reporting, Record Keeping, & Fees

Reporting, record keeping requirements, and fees associated with a justice of the peace's service as local registrar are discussed on [pages 48-52, and 63-64](#).

### D. Marriage Ceremonies

#### 1. Justices of the Peace Can Perform Marriage Ceremonies

A justice of the peace or retired justice of the peace is authorized to conduct marriage ceremonies in Texas.

A retired justice of the peace is a former justice who is vested in the Judicial Retirement System of Texas, or who has at least 12 years on the bench. *Family Code §2.202(a)(4)*. Years on the bench don't have to be consecutive, and they can be combined with years on other benches such as county or district court.

#### 2. A Justice of the Peace Can Charge for Performing Ceremonies but Can't Advertise

A justice of the peace can charge and keep a fee for performing a marriage ceremony, but can't advertise that he performs marriage ceremonies. A justice of the peace may receive, in addition to salary, all fees, commissions, or payments for performing marriage ceremonies. *Local Government Code §154.005(a)*.

#### 3. Statewide Jurisdiction to Perform a Marriage Ceremony

A justice of the peace can perform a marriage ceremony in any county in Texas as long as the marriage license was issued in Texas. *Cummings v. State*. A Texas justice of the peace cannot perform a wedding in another state using a Texas license, and cannot perform a wedding in Texas using another state's license.

#### 4. A Marriage Ceremony Can Be Conducted Once the Justice Receives a Valid Marriage License

Upon receiving an unexpired marriage license, a justice of the peace may conduct the marriage ceremony. *Family Code §2.203(a)*.

A marriage license expires 90 days after it is issued, therefore a marriage ceremony must occur within 89 days of the license being issued. *Family Code §2.201*.

#### 5. Marriage License Are Obtained from the County Clerk

Two people desiring to enter into a ceremonial marriage must obtain a marriage license from the county clerk of any county in Texas. *Family Code §2.001(a)*. Both people applying for a marriage license must be at least 18 years old or have court documentation that they have been emancipated and the disabilities of minority have been removed. *Family Code §2.101*.

### Can I charge for a marriage ceremony?

Yes, a justice of the peace can charge and keep a fee for performing a marriage ceremony.



## 6. States Have to Issue Marriage Licenses to Same Sex Couples

The Fourteenth Amendment requires states to issue marriage licenses to same-sex couples. The right to marry is protected by the Constitution, and excluding same sex couples from marriage conflicts with that right.

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Even though the Family Code says a marriage license cannot be issued for same-sex couples, the Supreme Court has said that failing to recognize a same sex marriage violates the United States Constitution. *Obergefell v. Hodges*.

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## 7. Justices of the Peace Cannot Refuse to Perform Marriage Ceremonies for Same Sex Couples if They Want to Continue Performing Marriage Ceremonies for Opposite Sex Couples

A justice of the peace has the choice to perform all marriage ceremonies or no marriage ceremonies, but can't discriminate by performing opposite sex ceremonies and not same sex ceremonies.

In performing a marriage ceremony, a justice of the peace is a state actor, but does not have governmental or judicial immunity in a federal civil rights discrimination lawsuit.

## 8. Discrimination in Conducting Marriage Ceremonies is Prohibited and Can Lead to Removal of Office

A person authorized to conduct a marriage ceremony is prohibited from discriminating on the basis of race, religion, or national origin against an applicant who is otherwise competent to be married.

If the State Commission on Judicial Conduct determines a justice of the peace has intentionally engaged in discrimination, the Commission may recommend the justice be removed from office. *Family Code §2.205*.

## 9. A Person on Active Duty in the Military Can Be Married by Proxy

A person can be married by proxy, by having someone stand in for them at the ceremony, if that person:

- Is in the military,
- Is stationed in another country, and
- Cannot be present at his or her wedding.

*Family Code §2.203*.

The person seeking marriage by proxy must submit an Affidavit of Absent Applicant to the county clerk. The Applicant must include:

- His or her personal information,
- Wedding details,

Can I refuse to perform same sex marriage ceremonies?

Yes, but then you can't perform opposite sex marriage ceremonies either.





- Reason for the absence, and
- Name an adult, other than the person they are going to marry, who will stand in for the marriage for the purpose of participating in the ceremony.

*Family Code §2.007.*

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Marriage by proxy where at least one of the parties to the marriage is incarcerated is not allowed. Though it was previously allowed, the law was changed in 2013 by House Bill 869.

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## 10. No Official or Mandatory Marriage Ceremony Wording

There is no official or mandatory wedding ceremony or ritual in Texas. The traditional ceremony is usually, but does not have to be, recited by a justice of the peace.

A copy of the traditional ceremony can be found on the TJCTC website at <http://www.tjctc.org/tjctc-resources/forms.html> under “General Officeholding”.

## 11. 72-Hour Waiting Period

A marriage ceremony cannot take place during the 72-hour period immediately following the issuance of the marriage license unless at least one of the applicants:

- Is a member of the military and on active duty,
- Is not a member of the military, but performs work for the United States Department of Defense as a department employee or under a contract with the department,
- Obtains a written waiver, or
- Completes a premarital education course and provides to the county clerk a course completion certificate taken less than one year before the marriage license application is filed.



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*Family Code §2.204(a)-(b).*

## 12. Waiver of the 72-Hour Waiting Period

An applicant may request a written waiver permitting the marriage ceremony to take place during the 72-hour period immediately following the issuance of the marriage license from:

- A judge with family law jurisdiction,
- A supreme court justice,
- An appeals judge, or
- A county judge.

If the judge finds there is good cause for the marriage to take place during the waiting period, the judge shall sign the waiver. *Family Code §2.204(c).*

**Can I waive the 72  
hour waiting  
period?**

No! A justice of the peace cannot issue a waiver to the 72 hour waiting period.

A justice of the peace may not issue a waiver to the 72 hour waiting period.

### **13. Marriage Performed During the Waiting Period Can Be Annulled**

A marriage performed during the 72-hour period immediately following the issuance of the marriage license may be annulled if a party to the marriage requests an annulment. *Family Code §6.110(a)*. A suit for annulment must be brought within 30 days of the marriage ceremony occurring. *Family Code §6.110(b)*.

### **14. Once A Ceremony Occurs, What Happens with the License?**

The person who conducts a marriage ceremony must:

- Write the date the ceremony is performed,
- Write the county where the marriage occurred,
- Write their name on the license,
- Sign the license, and
- Return it to the county clerk who issued it, no more than thirty days after the ceremony is conducted.

*Family Code §2.206.*

### **15. It is the Responsibility of the Person Who Performed the Ceremony to Return the License**

If a justice of the peace conducts a marriage ceremony, it is his or her responsibility to return the marriage license to the county clerk in the county it was issued. *Family Code §2.206.*

If a justice of the peace relies upon, asks, or allows the people married to return the license, the justice could get in trouble if the license is never returned. In this situation, the justice should make sure the people know they have thirty days to return the license or should return it himself or herself to be safe.



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## **E. Collecting Money**

Each justice of the peace is authorized to collect money for the county, subject to the terms and restrictions of the Local Government Code and the Code of Criminal Procedure. *Code of Criminal Procedure Art. 103.003; Local Government Code Chapter 112.*

### **1. Costs Not Payable in Justice Court Until a Written Bill Is Given to the Person**

In justice court, a cost is not payable by the person charged with the cost until a written bill:

- Is produced or ready to be produced,
- Contains the items of cost, and
- Is signed by the justice of the peace.

*Code of Criminal Procedure Art. 103.001.*

## 2. No Costs for Services Not Performed

Costs may not be imposed for services not performed or for services for which a cost is not expressly provided by law. *Code of Criminal Procedure Art. 103.002.*

## 3. Depositing the Money Collected

A justice who collects recognizances, bail bonds, fines, forfeitures, judgments, jury fees, and other obligations recovered in the name of the state must deposit the money in the county treasury by the next regular business day after the date the money is collected.

If it is not possible to deposit the money in the county treasury by that date, the justice of the peace shall deposit the money as soon as possible, but not later than five regular business days after the date the money is collected. *Code of Criminal Procedure Art. 103.004.*

## 4. Bill of Costs in a Transferred or Appealed Case

If a criminal action or proceeding is transferred from one court to another, or is appealed, the justice of the peace shall:

- Certify and sign a bill of costs stating the costs that have accrued, and
- Send the bill of costs to the court to which the action or proceeding is transferred or appealed.

*Code of Criminal Procedure Art. 103.006.*

## 5. No Additional Costs Assessed After a Defendant Has Paid Without a Motion Filed

After a defendant has paid costs, no more costs may be charged against the defendant unless the court rules on a motion presented to the court that additional costs are due. *Code of Criminal Procedure Art. 103.007.*

## 6. Correcting Errors in Costs

If a defendant files a motion within one year of the final disposition of a case in which costs were imposed, the court in which the case is pending or was last pending must correct any error in the costs. *Code of Criminal Procedure Art. 103.008.*

## 7. Reporting and Record Keeping

The comptroller of public accounts will prepare the forms to be used by county officials in the collection of county revenue, funds, fees, and other money, and in the disbursement of funds. The comptroller will determine the manner of keeping and reporting the officials' accounts. *Local Government Code §112.003.*

Reporting and record keeping requirements associated with a justice of the peace's activities in collecting fees for the county are discussed in more detail on page 52-55.

## Costs that Can Be Collected:

- Recognizances,
- Bail bonds,
- Fines,
- Forfeitures,
- Judgments,
- Jury Fees, and
- Other obligations recovered in the name of the State of Texas



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## CHAPTER 4: RECORD KEEPING & REPORTING

A justice of the peace should be prepared to file with the Office of Court Administration, DPS, TxDOT, and the Texas Commission on Judicial Conduct any such reports as may be required by these agencies.

For guidance on reporting requirements, refer to the 2017 Reporting Requirements for Justice Courts publication on the TJCTC website [here](#).

### A. Court Records

#### 1. Records Required to be Kept

A justice of the peace is required to keep:

- A civil docket,
- A criminal docket,
- Other dockets, books, and records as may be required by statute or the Rules of Civil Procedure, and
- A fee book.

*Texas Rules of Civil Procedure Rule 507.3(a); Code of Criminal Procedure §45.017.*

#### 2. Dockets May Be Kept Electronically

Civil and criminal dockets may be processed and stored by the use of electronic data processing equipment, at the discretion of the judge. *Government Code §27.058; Code of Criminal Procedure §45.017(b).*

#### 3. Civil Docket Requirements

The civil docket must contain the following information:

- The title of all suits filed with the court,
- The date when the first process was issued against the defendant, when the process was returnable, and the nature of the process,
- The date the parties appeared before the court,
- A description of the petition and any documents filed with the petition,
- Every adjournment, stating at whose request it was made and at what time,
- The date of the trial, stating whether it was before a jury or a judge,
- The verdict of the jury if any,
- The judgment signed by the judge and the date it was signed,
- All applications for setting aside judgments or granting new trials,
- Orders on applications for setting aside judgments or granting new trials,
- The date of issuing execution, to whom directed and delivered, and the amount of debt, damages and costs, and when any execution is returned, the date of the return, and the manner in which it was executed, and

- All stays and appeals that may be taken, the date when taken, and the amount of the bond and the name of the sureties.

*Texas Rules of Civil Procedure Rule 507.3(a).*

#### **4. Criminal Docket Requirements**

The criminal docket must contain the following information:

- The style and file number of each criminal action,
- The nature of the offense charged,
- The plea offered by the defendant and the date the plea was entered,
- The date the warrant, if any, was issued and the return made,
- The date the examination or trial was held, and if a trial was held, whether it was by a jury or by the justice,
- The verdict of the jury, if any, and the date of the verdict,
- The judgment and sentence of the court, and the date each was given,
- The motion for new trial, if any, and the decisions, and
- Whether an appeal was taken and the date of that action.

*Code of Criminal Procedure §45.017.*

#### **5. Separate Record for Witness Fees**

The justice of the peace shall maintain a record, separate from the docket, of:

- The number and style of each criminal action before the court,
- The name of each witness subpoenaed, attached, or recognized to testify in the action, and
- Whether the witness was a witness for the state or for the defendant.

*Code of Criminal Procedure §102.002.*

The purpose for keeping a separate record is because the county may ultimately be responsible for costs accumulated in a case. A defendant is liable on conviction for the fees for witnesses in the defendant's case. If a defendant convicted of a misdemeanor does not pay the defendant's fines and costs, the county or municipality, as appropriate, is liable for the fees for witnesses in the defendant's case. *Code of Criminal Procedure §102.002.*

If a person is subpoenaed as a witness in a criminal case and fails to appear, the person subpoenaed is liable for the costs of an attachment, unless he shows good cause to the court why he did not appear. *Government Code §573.081(a).*

#### **6. Each Justice of the Peace is the Records Custodian for His or Her Court**

Each justice shall arrange and safely keep all dockets, books, and papers transmitted to the justice by the justice's predecessors in office, and all papers filed in a case in justice court, subject to the public access requirements discussed in chapter 9. *Government Code §27.004(a).*

If a person vacates the office of justice of the peace, that person shall transfer all court records, documents, property, and unfinished business to the person's successor on the date the successor takes office. *Government Code §27.004(a-1).*

A person who has possession of dockets, books, or papers belonging to the office of any justice of the peace shall deliver them to the justice on demand. If the person refuses to deliver them, on a motion supported by an affidavit, the person may be attached and imprisoned by the order of the county judge until the person makes delivery. *Government Code §27.004(b)*.

The person against whom the motion is made must be given three days' notice of the motion before the person may be attached. *Government Code §27.004(b)*.

## 7. Court Appointment Reporting

### ***a. Reporting Required for All Court Appointments***

Each month, the court shall prepare a report for all cases before the court the preceding month regarding court appointments for:

- An attorney ad litem,
- A guardian ad litem,
- A guardian,
- A mediator, or
- A competency evaluator.

For a court that does not make an appointment in the preceding month, the clerk of the court must file a report indicating that no appointment was made by the court in that month. *Government Code §36.004(a)*.

### ***b. When and Where the Report is Due***

Not later than the 15th day of each month, the clerk of a court shall:

- Submit a copy of the report to the Office of Court Administration, and
- Post the report at the courthouse of the county in which the court is located and on any Internet website of the court.

*Government Code §36.004(b)*.

### ***c. Requirements of the Report***

The report on court appointments must include:

- The name of each person appointed by the court as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case in that month,
- The name of the judge and the date of the order approving compensation to be paid to a person appointed as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case in that month,
- The number and style of each case in which a person was appointed as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for that month,
- The number of cases each person was appointed by the court to serve as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator in that month,

## Reporting Requirements

A justice of the peace has reporting requirements for his or her role as:

- Judge,
- Ex Officio Notary Public,
- Local Registrar, and
- County fee collector

- The total amount of compensation paid to each attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator appointed by the court in that month and the source of the compensation, and
- If the total amount of compensation paid to a person appointed to serve as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for one appointed case in that month exceeds \$1,000, any information related to the case that is available to the court on the number of hours billed to the court for the work performed by the person or the person's employees, including paralegals, and the billed expenses.

*Government Code §36.004(a).*

***d. Format of Report Provided by the Office of Court Administration***

The Office of Court Administration of the Texas Judicial System shall prescribe the format that courts and clerks must use to report the information required, and shall post the information reported on the office's Internet website. *Government Code §36.004(c).*

## **B. Reporting and Record Keeping as an Ex Officio Notary Public**

A notary public, other than a court clerk notarizing instruments for the court, shall keep a record of specified information. *Government Code §406.014.*

### **1. A Notary Must Maintain a Fee Book**

A notary must also keep and maintain a fee book, and shall enter therein all fees charged for services rendered. The fee book shall, at all times, be subject to the inspection of any person wishing to see the fees charged. *Government Code §406.014(c).*

### **2. Requirements of the Notary Book**

The notary's record book shall reflect the following for all instruments notarized:

- The date of each instrument notarized,
- The date of the notarization,
- The name of the signer, grantor, or maker,
- The signer's, grantor's, or maker's residence or alleged residence,
- Whether the signer, grantor, or maker is personally known by the notary public or was introduced to the notary public and, if introduced, the name and residence of the individual introducing the signer, grantor, or maker,
- If the instrument is proven by a witness, the residence of the witness, whether the witness is personally known by the notary public or was introduced to the notary public and, if introduced, the name and residence of the individual introducing the witness;
- The name and residence of the grantee,
- If land is conveyed or charged by the instrument, the name of the original grantee and the county where the land is located, and
- A brief description of the instrument.

*Government Code §406.014(a)(1)-(9).*

### **3. Entries are Public**

The entries in the notary's record book are public information and subject to public scrutiny. *Government Code §406.014(b)*.

### **4. Any Person Can Obtain a Copy of a Record of Official Acts**

Upon payment of all fees, a notary shall provide a certified copy of any record of official acts in the notary public's book of record to any person requesting the copy. *Government Code §406.014(c)*.

## **C. Reporting and Record Keeping as the Local Registrar**

Each local registrar shall submit a self-assessment report to the state registrar annually. The Department of State Health Services shall prescribe the information that must be included in the report to allow a thorough desk audit of a local registrar.

### **1. Reports of Information**

On the state registrar's demand, a person, including a local registrar, who has information relating to a birth, death, or fetal death shall supply the information to the state registrar in person, by mail, or through the local registrar. The person shall supply the information on a form provided by the Department or on the original certificate. *Health and Safety Code §191.024(a)*.

#### ***a. Forms Must Be Approved by the Department***

Forms for the registration of births, deaths, and fetal deaths must be approved by the Department of State Health Services. *Health and Safety Code §191.025(a)*.

#### ***b. Forms Supplied by the County***

A municipality shall supply its local registrar, and each county shall supply the county clerk, with permanent record books for recording the births, deaths, and fetal deaths occurring in their respective jurisdictions. *Health and Safety Code §191.025(b)*.

#### ***c. Certificates Supplied to Those Who Need Them***

A local registrar shall supply forms of certificates to persons who need them. Rules shall be established for strict accountability of birth certificates to prevent fraud. *Health and Safety Code §191.025(c)*.

#### ***d. Information Required on a Certificate***

Information required on a certificate must be written legibly in durable blue or black ink or may be filed and registered by photographic, electronic, or other means as prescribed by the state registrar. *Health and Safety Code §191.025(d)*.

A certificate must contain each item of information required on the certificate or a satisfactory reason for omitting the item. *Health and Safety Code §191.025(e)*.



## **2. Certificates and Records**

### ***a. Complete Record of Every Birth and Death Required***

The local registrar shall secure a complete record of each birth, death, and fetal death that occurs in the local registrar's jurisdiction. *Health and Safety Code §191.026(a)*.

### ***b. Birth and Death Certificates Consecutively Numbered***

The local registrar shall consecutively number birth and death certificates in separate series, beginning with the number "1" for the first birth and the first death in each calendar year. *Health and Safety Code §191.026(b)*.

### ***c. Local Registrar Must Sign Each Certificate***

The local registrar shall sign each certificate to attest to the date the certificate is filed in the local registrar's office. *Health and Safety Code §191.026(b)*.

### ***d. Amendment of Certificate***

A record of a birth, death, or fetal death accepted by a local registrar for registration may not be changed unless an amending certificate is filed. *Health and Safety Code §191.028(a)*. An amending certificate may be filed to complete or correct a record that is incomplete or proved by satisfactory evidence to be inaccurate. The amendment must be in a form prescribed by the Department, and shall be attached to and become a part of the legal record of the birth, death, or fetal death if the amendment is accepted for filing. *Health and Safety Code §191.028(b)*.

Not later than the 30<sup>th</sup> business day after the date the Department receives an amending certificate, the department shall notify the individual of whether the amendment has been accepted for filing. *Health and Safety Code §191.028(c)*.

### ***e. Review of Certificate by Local Registrar***

The local registrar shall carefully examine each birth or death certificate when presented for registration to determine if it is completed as required. *Health and Safety Code §191.027(a)*.

If a death certificate is incomplete or unsatisfactory, the local registrar shall call attention to the defects in the return. *Health and Safety Code §191.027(b)*. If a birth certificate is incomplete, the local registrar shall immediately notify the informant and require the informant to supply the missing information if it can be obtained. *Health and Safety Code §191.027(c)*.

### ***f. Certificates Must Be Copied into the Record Book or Duplicates Must Be Kept***

The local registrar shall copy in the record book each certificate that the local registrar registers, unless the local registrar keeps photographic duplicates. Photographic duplicates of each certificate shall be permanently preserved in the local registrar's office as the local record, in the manner directed by the state registrar. *Health and Safety Code §191.026(c)*.

The local registrar may permanently bind duplicate reports of births and deaths, if the duplicates are required by local ordinance, and index them in the manner that the state registrar indexes records. *Health and Safety Code §191.026(d)*.

***g. Certificate or Report Sent to State Registrar***

On the 10<sup>th</sup> day of each month, the local registrar shall send to the state registrar:

- The original certificates that the local registrar registered during the preceding month, and
- A report of no births or deaths on a card provided for that purpose if no births or deaths occurred during the preceding month.

*Health and Safety Code §191.029.*

***h. Permanent Records May Be Destroyed if the Records Are Available Online***

The local registrar may, after the first anniversary of the date of registration of a birth, death, or fetal death, destroy the permanent record if:

- The local registrar has access to electronic records of births, deaths, and fetal deaths maintained by the vital statistics unit, and
- Before destroying the records, the local registrar certifies to the state registrar that each record maintained by the local office that is to be destroyed has been verified against the records contained in the unit's database and that each record is included in the database or otherwise accounted for.

*Health and Safety Code §191.026(e).*

**3. Death Certificates**

***a. Forms for Death Registration Must Inquire if the Decedent was a Peace Officer***

The form for the registration of deaths must include the question, "Was the decedent a peace officer or an honorably retired peace officer in this state?" *Health and Safety Code §191.025(f).*

***b. Time and Place for Filing Death Certificate***

Not later than the 10<sup>th</sup> day after the date of a death, a death certificate shall be filed with the local registrar of the registration district in which:

- The death occurs, or
- The body is found, if the place of death is not known.

*Health and Safety Code §193.003(a).*

A certificate of a fetal death that occurs shall be filed with the local registrar of the registration district in which:

- The fetal death occurs, or
- The body is found, if the place of the fetal death is not known.

*Health and Safety Code §193.003(b).*

***c. Person Required to File Death Certificate***

The person in charge of interment or in charge of removal of a body from a registration district for disposition shall:

- Obtain and file the death certificate or fetal death certificate,
- Enter on the certificate the information relating to disposition of the body,
- Sign the certificate, and
- File the certificate electronically as specified by the state registrar.

*Health and Safety Code §193.002.*

***d. Person Required to File the Death Certificate Must Notify the Justice of the Peace***

If a death or fetal death occurs without medical attention or is otherwise subject to Chapter 49 Code of Criminal Procedure, the person required to file the death or fetal death certificate shall notify the appropriate justice of the peace, medical examiner, or law enforcement body. *Health and Safety Code §193.005(d).*

***e. A Person Conducting an Inquest Has Five Days to Complete the Medical Certification***

A person conducting an inquest shall:

- Complete the medical certification not later than five days after receiving the death or fetal death certificate, and
- State on the medical certification the disease that caused the death or, if the death was from external causes, the means of death and whether the death was probably accidental, suicidal, or homicidal, and any other information required by the state registrar to properly classify the death.

*Health and Safety Code §193.005(e).*

***f. Certain Information Forwarded to DPS if the Decedent's Identity is Unknown***

If the identity of the decedent is unknown, the person conducting the inquest shall obtain and forward to the Department of Public Safety:

- The decedent's fingerprints,
- Information concerning the decedent's hair color, eye color, height, weight, deformities, and tattoo marks, and
- Other facts required for assistance in identifying the decedent.

*Health and Safety Code §193.005(f).*

For more information on inquests and the Justice of the Peace's responsibilities and duties, refer to the Inquest Deskbook.

**4. Certificate of Birth Resulting in Stillbirth**

***a. Certificate of Birth Can Be Issued for a Stillbirth***

A local registrar is authorized to issue a certificate of birth resulting in stillbirth on request of a parent. *Health and Safety Code §192.0022.* Stillbirth means an unintended, intrauterine fetal death occurring after a gestational age of not less than 20 completed weeks. *Health and Safety Code §192.0022(a)(1).*

***b. A Parent Can Provide a Name for the Stillborn Child***

A parent may provide a name for a stillborn child in the request for a certificate of birth resulting in stillbirth. If the requesting parent does not wish to provide a name, the vital statistics unit shall fill in the certificate with the name "baby boy" or "baby girl" and the last name of the parent.

The name of the stillborn child provided on, or later added by amendment to, the certificate of birth resulting in stillbirth shall be the same name that is placed on the original or amended fetal death certificate. *Health and Safety Code §192.0022(c).*

***c. A Certificate Must Include the State File Number on the Death Certificate***

A certificate of birth resulting in stillbirth must include the state file number of the corresponding fetal death certificate. *Health and Safety Code §192.0022(d).*

***d. Certificates Filed with the Local Registrar***

On issuance of a certificate of birth resulting in stillbirth to a parent who has requested the certificate, the vital statistics unit shall file an exact copy of the certificate with the local registrar of the registration district in which the stillbirth occurred. The local registrar shall file the certificate of birth resulting in stillbirth with the fetal death certificate. *Health and Safety Code §192.0022(g).*

***e. Stillborn Birth Certificate Issued Regardless of When Death Certificate Issued***

A parent may request the vital statistics unit to issue a certificate of birth resulting in stillbirth without regard to the date on which the fetal death certificate was issued. *Health and Safety Code §192.0022(h).*

**D. Reporting and Record Keeping When Collecting Money for the County**

**1. Report Required**

***a. Reports for Money Collected for the County***

An officer who collects money, other than taxes, for a county shall report to the commissioners court during each term of the court. *Code of Criminal Procedure Art. 103.005(a).*

***b. Reports for Money Collected for the State***

An officer who collects money other than taxes for the state shall report to the district court on the first day of each term of court. *Code of Criminal Procedure Art. 103.005(b).*

***c. Requirements of the Report***

The report must state for the reporting period:

- The amount of money collected by the officer,
- When and from whom the money was collected,
- The process by which the money was collected, and
- The disposition of the money.

*Code of Criminal Procedure Art. 103.005(c).*

If an officer has not collected money since the last report required to be filed, the officer shall report that fact. *Code of Criminal Procedure Art. 103.005(e)*. The report must be in writing and under the oath of the officer. *Code of Criminal Procedure Art. 103.005(d)*.

## **2. Fee Records**

Each justice of the peace shall keep a fee record. *Code of Criminal Procedure Art. 103.009(a)*.

### ***a. Requirements of the Record***

The record must contain:

- A statement of each fee or item of cost to be charged for a service rendered in a criminal action or proceeding,
- The number and style of the action or proceeding, and
- The name of the officer or person who is entitled to receive the fee.

*Code of Criminal Procedure Art. 103.009(a)*.

### ***b. Fee Record Are Public Information***

Any person may inspect a fee record. *Code of Criminal Procedure Art. 103.009(b)*. A statement of an item of cost in a fee record is prima facie evidence of the correctness of the statement. *Code of Criminal Procedure Art.103.009(c)*.

### ***c. The County Provides Equipment and Supplies***

The county shall provide to officers required to keep a fee record equipment and supplies necessary to keep the record. *Code of Criminal Procedure Art.103.009(d)*.

## **3. Receipt Books**

### ***a. Receipt Books Provided by the County***

Each county shall provide a receipt book to each officer collecting fines and fees in criminal cases for the county. The book must contain duplicate official receipts, and each receipt must bear a distinct number and facsimile of the official seal of the county. *Code of Criminal Procedure Art. 103.010(a)*.

### ***b. Person Paying a Fine is Entitled to a Receipt***

An officer who collects fines or fees in a criminal case shall give the person paying the money a receipt from the receipt book.

The receipt must show:

- The amount of money paid,
- The date the money was paid,
- The style and number of the cause in which the costs were accrued,
- The item of costs,
- The name of the person paying the money, and
- The official signature of the officer receiving the money.

*Code of Criminal Procedure Art. 103.010(b)*

***c. Fines and Fees Can Be Maintained in an Online Database Instead of a Receipt Book***

Instead of a receipt book, each officer collecting fines or fees in a criminal case may maintain the information in a computer database. The officer still must provide a receipt to each person paying a fine or fee. *Code of Criminal Procedure Art. 103.010(c)*.

**4. Audit of Receipt Books and Records**

***a. Records Provided to or Made Available to the County Auditor Every Month***

An officer shall deliver the receipt book or a copy of any receipt records contained in a computer database to the county auditor at the end of each month's business, or at the end of each month shall allow the county auditor electronic access to receipt records. *Code of Criminal Procedure Art. 103.011*.

***b. Auditor Checks to See if Money was Properly Disposed Of***

The county auditor shall examine the receipt book or computer records and determine whether the money collected has been properly disposed of. *Code of Criminal Procedure Art. 103.011*.

***c. Full Receipt Books Are Retained by the Auditor***

If each receipt in a receipt book has been used, the county auditor shall keep the book. *Code of Criminal Procedure Art. 103.011*.

***d. Unused and Partially Used Receipt Books Are Returned to the Officer***

If any receipt in the book has not been used, the auditor shall return the book to the officer. *Code of Criminal Procedure Art. 103.011*.

***e. Electronic Receipt Records Are Delivered to and a Copy Kept by the Auditor***

The county auditor may keep a copy of computer generated receipt records delivered to the county auditor. *Code of Criminal Procedure Art. 103.011*.

***f. Receipt Books Are Public Information***

Any person may inspect a receipt book or a computer generated receipt record kept by the county auditor. *Code of Criminal Procedure Art. 103.011*.

**5. Monthly Reports to Commissioners Court**

Each justice of the peace who collects money for the use of the county shall make a full report at least once a month at a regular term to the commissioners court on:

- All fines imposed and collected,
- All judgements rendered and collected for the use of the county, and
- All jury fees collected by the court in favor of or for the use of the county.

At the time of the report, the justice of the peace shall also present the receipts and vouchers that show the disposition of the money, fines, and judgments. *Local Government Code §114.044(a)*.

### ***a. Requirements of the Report***

Each report must fully state:

- The name of the person fined and the amount of the fine or the names of the person against whom judgment was rendered and the amount of the judgment,
- The style, number, and state of each case in which a fine was imposed or a judgment rendered, or
- The amount of the jury fees collected, the style and number of the case in which each jury fee was collected, and the name of the person from whom the fee was collected.

*Local Government Code §114.044(b).*

### ***b. Commissioners Court's Duties Regarding the Records***

The court shall carefully examine the reports, receipts, and vouchers. If the court finds them to be correct, the court shall direct the county clerk to enter the information in the county finance records. If they are found to be incorrect, the court shall summon before the court the officer making the report and shall have corrections made. *Local Government Code §114.044(c).*

### ***c. Receipts Filed in the County Clerk's Office***

The reports, receipts, and vouchers shall be filed in the county clerk's office. *Local Government Code §114.044(c).*

## **E. Required Financial Reporting**

### **1. Financial Statement Required**

Each year, a justice of the peace of a county with a population of 125,000 or more shall file a financial statement. A candidate for the office of justice of the peace must also file a financial statement. *Local Government Code §159.001(2); Local Government Code §159.003(a).* Filing dates are discussed below.

### **2. Requirements of the Statement**

The statement must:

- Be filed with the county clerk in the county in which the justice or candidate resides,
- Comply with Sections 572.022 and 572.023 Government Code, and
- Comply with any order of the commissioners court of the county requiring additional disclosures.

*Local Government Code §159.003(b).*

#### ***a. If Reporting by Category is Required***

If an amount in a financial statement is required to be reported by category, the individual filing the statement shall report whether the amount is:

- Less than \$5,000,

- At least \$5,000 but less than \$10,000,
- At least \$10,000 but less than \$25,000, or
- \$25,000 or more.

*Government Code §572.022(a).*

***b. Reporting of Stocks by Category***

The individual filing the statement shall report an amount of stock by category of number of shares instead by category of dollar value and shall report whether the amount is:

- Less than 100 shares,
- At least 100 but less than 500 shares,
- At least 500 but less than 1,000 shares,
- At least 1,000 but less than 5,000 shares,
- At least 5,000 but less than 10,000 shares, or
- 10,000 shares or more.

*Government Code §572.022(b).*

***c. Description of Real Property Required***

The individual filing the statement shall report a description of real property by reporting:

- The street address, if available, or the number of lots of acres, as applicable, in each county, and the name of the county if the street address is not available, and
- The names of all persons retaining an interest in the property, excluding an interest that is a severed mineral interest.

*Government Code §572.022(c).*

***d. Statement of Value of a Gift Required***

For a gift of cash or a cash equivalent such as a negotiable instrument or gift certificate, the individual shall include in the description of the gift a statement of the value. *Government Code §572.022(d).*

***e. Contents of a Financial Statement in General***

A financial statement must include an account of the financial activity of the individual, and an account of the financial activity of the individual's spouse and dependent children, if the individual had actual control over that activity for the preceding calendar year. *Government Code §572.023(a).* More information on what the account of financial activity consists of can be found in §572.023(b)(1)-(14) of the Government Code.

**3. Filing Dates**

***a. Filing Date for Current Justices of the Peace***

A justice of the peace shall file the financial statement not later than April 30<sup>th</sup> of each year. *Local Government Code §159.004(a); Government Code §572.026.*



### ***b. Filing Date for Appointed Justices of the Peace***

An individual appointed to fill a vacancy in an elective office shall file a financial statement not later than the 30<sup>th</sup> day after the date of appointment or date of qualification for the office. *Local Government Code §159.004(a); Government Code §572.026.*

### ***c. Filing Date for Candidates for Justice of the Peace***

A candidate for office of justice of the peace shall file the financial statement on whichever date is later:

- The 60<sup>th</sup> day after the date of the regular filing deadline for an application for a place on the ballot in the general primary election, or
- February 12<sup>th</sup>

*Local Government Code §159.004; Government Code §572.027(a).*

## **4. Timeliness of Filing**

### ***a. Deadline for Filing***

The deadline for filing a financial statement is 5 p.m. of the last day designated above for filing the statement. *Government Code §572.029(a).* If the last day for filing the financial statement is a Saturday, Sunday, or holiday, the statement is timely if filed on the next day that is not a Saturday, Sunday, or holiday. *Government Code §572.029(b).*

### ***b. Report Timely Filed if Placed in the Mail on the Filing Deadline Date***

A financial statement is timely filed if it is properly addressed and placed in the US Post Office or in the hands of a common or contract carrier not later than the last day for filing. The post office cancellation mark or the receipt mark of a common or contract carrier is prima facie evidence of the date the statement was deposited with the post office or carrier. *Government Code §572.029(c).*

### ***c. Report Timely Filed if the Report is Delivered or E-filed on the Filing Deadline Date***

A person is considered to have timely filed a financial statement if:

- The statement is personally delivered not later than 5 p.m. of the last day for filing the statement, or
- The county clerk has adopted rules and procedures to provide for electronic filing and the statement is electronically filed not later than midnight of the last day for filing.

*Local Government Code §159.004(e).*

## **5. Extensions for Filing**

### ***a. Extension for Filing Allowed for a Current Justice of the Peace***

A justice of the peace may request the county clerk grant an extension of up to 60 days for filing the statement. The county clerk **shall** grant the request if it is received before the filing deadline or if a timely filing or request for extension is prevented because of physical or mental incapacity. The county clerk may not grant more than one extension to an individual in one year except for good cause shown. *Local Government Code §159.004(c).*

***b. Extension for Filing Not Allowed for a Candidate for Justice of the Peace***

A county clerk may not grant an extension to a candidate for office as a justice of the peace. *Local Government Code §159.004(d)*.

**6. Electronic Filing Allowed**

The statement may be filed by electronic mail. *Local Government Code §159.003(c)*.

**7. Public Access to Financial Statements**

Financial statements are public records. *Local Government Code §159.007(a)*.

The county clerk may, and on notification from a former justice of the peace or candidate shall, destroy any financial statements filed by the justice or candidate two years after the date the person ceases to be a justice or candidate. *Local Government Code §159.007(c)*.

**8. Notification to Prosecuting Attorney if A Justice of the Peace Doesn't File a Financial Statement**

The county clerk of each county in which a person is required to file a financial statement shall maintain a list of the justices of the peace and candidates for justices of the peace. Not later than the 10<sup>th</sup> day after each applicable filing deadline, the county clerk shall provide to the county attorney or criminal district attorney a copy of the list showing:

- Whether the persons filed a financial statement as required,
- Whether the persons timely requested and were granted an extension and the new due date, or
- Whether the persons did not timely file a financial statement or receive an extension.

*Local Government Code §159.0071.*

**F. Management and Preservation of Records**

Each elected justice of the peace is the records management officer for the records of his or her office. *Local Government Code §203.001.*

**1. Duties as the Records Management Officer**

The elected county officer shall:

- Develop policies and procedures for the administration of an active and continuing records management program,
- Administer the records management program so as to reduce the costs and improve the efficiency of recordkeeping,
- Prepare and file with the director and librarian the records control schedules and amended schedules and the list of obsolete records,

- Prepare requests for authorization to destroy records not on an approved control schedule, requests to destroy the originals of permanent records that have been microfilmed, and electronic storage authorization requests,
- Identify and take adequate steps to preserve records that are of permanent value,
- Identify and take adequate steps to protect the essential records of the office,
- Ensure that the maintenance, preservation, microfilming, destruction, or other disposition of records is carried out in accordance with the policies and procedures of the records management program and the requirements of this subtitle and rules adopted under it, and
- Cooperate with the commission in its conduct of statewide records management surveys.

*Local Government Code §203.002.*

## **2. Justices of the Peace Shall Receive Assistance from the Director and Librarian**

The director and librarian shall provide advice and assistance to records management officers in establishing records management programs and in carrying out other requirements. *Local Government Code §203.004.* The director and librarian means the executive and administrative officer of the Texas State Library and Archives Commission. *Local Government Code §201.003(4).*

## **3. Records Can Be Stored Electronically Anytime There is a Requirement That Records Be Kept in a Book**

If a state law relating to the keeping of records by a local government officer or employee requires the records to be kept in a "book," "record book," or "well-bound book," or contains any similar requirement that a record be maintained in bound paper form, the record may be maintained on microfilm or stored electronically unless the law specifically prohibits those methods. *Local Government Code §201.004.*

## **4. Local Government Records Are Public Property**

Local government records created or received in the transaction of official business, or the creation or maintenance of which were paid for by public funds are declared to be public property. *Local Government Code §201.005(a).* A local government officer or employee does not have, by virtue of the officer's or employee's position, any personal or property right to a local government record even though the officer or employee developed or compiled it. *Local Government Code §201.005(b).*

## **5. Records Are to Be Delivered to the Justice's Successor**

A custodian of local government records shall, at the expiration of the custodian's term of office, appointment, or employment, deliver to the custodian's successor, if there is one, all local

### **Who keeps magistration paperwork?**

A justice of the peace who is also a magistrate must keep all papers related to the case until the case gets filed in a higher court.

Once filed, the justice must send all original documents to the court that now has jurisdiction.

government records in custody. If there is no successor, the governing body shall determine which officer of the local government shall have custody. *Local Government Code §201.006(a)*.

## 6. Destruction of Records

A local government record may be destroyed if:

- The record is listed on a records control schedule accepted for filing by the director and librarian and either its retention period has expired or it has been microfilmed or stored electronically,
- The record appears on a list of obsolete records approved by the director and librarian, or
- A destruction request is filed with and approved by the director and librarian for a record not listed on an approved control schedule.

*Local Government Code §202.001(a)*.

The following records may be destroyed without meeting the conditions above:

- Records ordered to be destroyed by an expunction order, and
- Exempt records as defined by rules adopted by the commission or listed as exempt in a records retention schedule issued by the commission.

*Local Government Code §202.001(b)*.

Justice courts use the following retention schedules:

- Retention Schedule for Records Common to All Local Governments (GR), and
- Retention Schedule for Records of Justice and Municipal Courts (LC) retention schedules.

**Those retention schedules can be found on the Texas State Library and Archives Commission website at [www.tsl.state.tx.us/slr/recordspubs/localretention](http://www.tsl.state.tx.us/slr/recordspubs/localretention).**

### ***a. Restrictions on the Destruction of Records***

A local government record, the subject matter of which is known by the custodian to be in litigation, may not be destroyed until the litigation is settled. *Local Government Code §202.002(a)*.

A local government record subject to a public information request under Chapter 552 of the Government Code may not be destroyed until the request is resolved. *Local Government Code §202.002(b)*.

### ***b. Method of Destruction***

A local government record may be destroyed by burning, shredding, pulping, burial in a landfill, or by sale or donation for recycling purposes, except that records to which public access is restricted under Chapter 552 of the Government Code, or other state law may be destroyed only by burning, pulping, or shredding. *Local Government Code §202.003(a)&(b)*.

**Where can I find retention schedules?**

Texas State Library and Archives Commission website.

Justice courts use the GR and LC retention schedules

A local government that sells or donates records for recycling purposes shall establish procedures for ensuring that the records are rendered unrecognizable as local government records by the recycler. *Local Government Code §202.003(c)*.

The director and librarian may approve other methods of destruction that render the records unrecognizable as local government records. *Local Government Code §202.003(d)*.

***c. No Personal Liability if Records Destroyed in Compliance with These Rules***

A custodian of local government records, records management officer, or other officer or employee of a local government may not be held personally liable for the destruction of a local government record if the destruction is in compliance with the rules discussed above. *Local Government Code §202.007*.

## CHAPTER 5: FEES

As part of the job, a justice of the peace may take and process fees, commissions, or payments for:

- Performing marriage ceremonies,
- Acting as registrar for the Bureau of Vital Statistics, and
- Acting as ex officio notary public.

*Local Government Code §154.005(a).*

The justice may personally keep fees received for performing wedding ceremonies, but cannot personally keep fees received for issuing copies of birth or death certificates, acting as local registrar, or acting as ex officio notary public.

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Fees received for performing duties as a local registrar or as ex officio notary public are required to be deposited in the treasury and are not personal compensation for the justice. **Op. A.G. No. GA-0145 (2004).**

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### A. Fees Associated with Being an Ex Officio Notary Public

#### 1. Fee Amounts Set by Statute

The fees an ex officio notary public may charge are set by statute and can be found in Section 406.024, Government Code. The fees include, but are not limited to, charging fees for certificates and seals, taking acknowledgments or proofs, for administering oaths or affirmations, and taking depositions. *Government Code §406.024(a).*

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A justice of the peace may not collect a notary public fee for acknowledging sworn pleadings filed in the justice court. **Att’y Gen. Op. No. MW-456 (1982).**

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#### 2. Fee Lists Must Be Posted

The complete list of fees shall be posted at all times in a conspicuous place in the office. *Government Code §603.008.*

#### 3. Fees Not Due Until a Bill is Produced

No fee is payable until the notary produces a signed bill or written account containing the details of the charge. *Government Code §603.007.*

## **B. Fees Associated with Being the Local Registrar**

### **1. Services That Fees Can Be Collected For**

Fees may be collected for providing services to the public and performing other activities in connection with maintenance of the vital statistics system, including:

- Performing searches of birth, death, fetal death, marriage, divorce, annulment, and other records,
- Preparing and issuing copies and certified copies of birth, death, fetal death, marriage, divorce, annulment, and other records, and
- Filing a record, amendment, or affidavit.

*Health and Safety Code §191.0045(a).*

The executive commissioner of the Department of State Health Services may prescribe a fee schedule for vital statistics services. *Health and Safety Code §191.0045(b).*

### **2. Local Registrars Collect the Same Fees as the Department**

A local registrar who issues a certified copy of a birth or death certificate shall collect the same fees as collected by the Department of State Health Services. *Health and Safety Code §191.0045(d).* A fee shall be collected by the registrar on the issuance of a vital statistics record, including a record issued through a Remote Birth Access site. *Health and Safety Code §191.0045(i).*

### **3. Fees Retained and Remitted for Issuing Birth Certificates**

A local registrar who collects a fee for a certified copy of a birth certificate shall deduct 20 cents of that fee to apply to the registrar's administrative costs and remit \$1.80 of that fee to the comptroller. *Health and Safety Code §191.022(f).*

### **4. Additional Fee Collected for Certain Actions**

In addition to fees for providing services to the public, an additional \$2 fee shall be collected for each of the following:

- Issuing a certified copy of a certificate of birth,
- Issuing a wallet sized certification of birth, and
- Conducting a search for a birth certificate.

*Health and Safety Code §191.0045(e).*

### **5. Additional Fee Allowed for Preservation of Records and Training Expenses**

In addition to other fees, a local registrar may collect a fee not to exceed \$1 for:

- Preserving vital statistics records maintained by the registrar, including birth, death, fetal death, marriage, divorce, and annulment records,
- Training registrar employees regarding vital statistics record, and
- Ensuring the safety and security of vital statistics records.

*Health and Safety Code §191.0045(h).*

## **6. Fee Exemptions**

A local registrar shall not charge a fee that is associated with searching for or providing a record, including a certified copy of a birth record, if the applicant states that he or she is requesting the record for the purpose of obtaining an election identification certificate under Section 521A.001, Transportation Code. *Health and Safety Code §191.0046(e)*.

## **C. Fees Associated with Performing Marriage Ceremonies**

A judge may receive compensation for weddings performed during regular office hours, and for weddings performed after hours so long as the judge does not take advantage of his official position to conduct such services. *Judicial Opinion 236 (1998)*.

## **D. Costs for Copies**

Costs for copying judicial records are set by the OAG by rule in the Texas Administrative Code unless there is a specific statute that addresses costs for making copies. *Texas Administrative Code §70.10; Rules of Judicial Administration Rule 12.7*.

### **1. Fees for Certified Copies**

A justice of the peace shall collect \$2.00 for the first page and \$0.25 for each additional page. *Local Government Code §118.121(2)*.

### **2. Fees for Copies of Documents Other Than Certified Copies**

A justice of the peace shall collect \$1.00 for the first page and \$0.25 for each additional page. *Local Government Code §118.121(2)*. [For additional information about costs, see the section titled Costs for Copies of Judicial Records in Chapter 9 beginning on page 125.](#)

## **E. Payment of Fees or Costs by Credit Card or Electronic Means**

### **1. Fees Can Be Paid by Credit Card or Electronic Means**

The commissioners court of a county may authorize a county or precinct officer who collects fees, fines, court costs, or other charges on behalf of the county or the state to accept payment by credit card, the electronic processing of checks, or other electronic means of a fee, fine, court costs, or other charge. *Local Government Code §132.002(a)*.

### **2. A Processing Fee Can Be Charged for Electronic Payments**

The commissioners court may authorize a county or precinct officer to collect and retain a fee for processing the payment by credit card, the electronic processing of checks, or other electronic means. *Local Government Code §132.002(a)*. The commissioners court may also authorize the acceptance of payment by credit card or by electronic means without requiring collection of a fee. *Local Government Code §132.002(e)*.



## CHAPTER 6: ETHICS

The legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws. A justice of the peace is the arbiter of facts and law for the resolution of disputes.

Because the judge is a highly visible symbol of government, it is important that parties to a case, and the public in general, perceive that actions taken by the justice of the peace result in fair trials and that the court process is equitable and just. Public confidence is the cornerstone of the judicial system. Justices should be diligent to ensure their actions are above reproach and not subject to criticism due to any perceived conflicts, whether real or imagined.

### A. Code of Judicial Conduct

The Code of Judicial Conduct contains eight canons that establish standards for a judge's conduct on and off the bench. The objective of the Code is to establish basic standards which should govern the conduct of all judges and provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct. It is not intended as an exhaustive guide for the conduct of judges. Judges should also be governed in their judicial and personal conduct by general ethical standards. Judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in the legal system.

**The canons are discussed in the text as they apply to justices of the peace. The complete Code of Judicial Conduct can be found [here](#).**

The Committee on Judicial Ethics, appointed by the Judicial Section of the State Bar of Texas, renders advisory opinions on the Code of Judicial Conduct to assist judges with understanding and properly implementing the canons. Some opinions are included in this deskbook to help illustrate certain situations. All opinions can be located at [www.txcourts.gov/publications-training/judicial-ethics-bench-books/judicial-ethics-opinions](http://www.txcourts.gov/publications-training/judicial-ethics-bench-books/judicial-ethics-opinions).

#### 1. Canon 1 - Upholding the Integrity and Independence of the Judiciary

A justice of the peace should participate in establishing, maintaining, and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary is preserved.

### What is the Code of Judicial Conduct?

It is a set of standards that help a justice of the peace know how to conduct himself or herself on and off the bench.

It should be used in conjunction with general ethics.

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A justice of the peace should not be the subject of a fund raising "roast" because such activity could undermine the high standards and integrity of the office. **Judicial Opinion 198 (1996)**.

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A justice cannot, at any time, act as a prosecutor in any capacity. If the justice of the peace is prosecuting cases within its jurisdiction, especially contacting defendants for guilty plea arrangements, then the justice is violating the Code of Judicial Conduct and the Texas Constitution. *Judicial Opinion 225 (1998)*.

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## **2. Canon 2- Avoiding Impropriety and the Appearance of Impropriety in All of the Justice's Activities**

### ***a. A Justice of the Peace Must Comply with the Law***

A justice of the peace must comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

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A justice may not publicly endorse a candidate for public office because it involves the use of the prestige of the justice and the prestige of his office. A justice's involvement in another person's political race gives the public reason to question the justice's independence. *Judicial Opinion 73 (1984)*.

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A justice of the peace may not be employed as a peace officer or bailiff because this would create an appearance of impropriety. If the justice is a certified peace officer, the justice must be on inactive status as a peace officer. *Judicial Opinion 242 (1999)*.

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### ***b. A Justice of the Peace Must Not Be Improperly Influenced by a Relationship***

A justice must not allow any relationship to influence judicial conduct or judgement. A justice shall not lend the prestige of judicial office to advance the private interests of the justice or others; nor shall a justice convey, or permit others to convey, the impression that they are in a special position to influence the justice.

A justice of the peace shall not testify voluntarily as a character witness.

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A justice of the peace may write letters of recommendation and allow his name to be used as a reference so long as the recommendation comes from personal knowledge, and the recommendation or reference is given to a specific person for a specific use. *Judicial Opinion 222 (1998)*.

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### ***c. No Participation in Discriminatory Organizations***

A justice of the peace shall not knowingly hold membership in any organization that practices discrimination prohibited by law.

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Courts may not allow a law firm to post court dockets on the firm’s web page. This would lend the prestige of the judicial office to a private firm and would give the impression that the firm has a special ability to influence the judiciary. *Judicial Opinion 248 (1999)*.

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Brochures that announce the availability of a county bar sponsored lawyer referral service may be allowed in the courtroom and other public areas in the courthouse. Doing so promotes meaningful access to the legal system for all persons regardless of their economic condition, and the justice is not promoting an individual lawyer but assisting the public to locate a lawyer. *Judicial Opinion 203 (1996)*.

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### **3. Canon 3 - Performing the Duties of the Judicial Office Impartially and Diligently**

#### ***a. Judicial Duties Take Precedence***

The judicial duties of a justice take precedence over all the justice’s other activities. Judicial duties include all the duties of the justice’s office prescribed by law; adjudicative, administrative, and disciplinary responsibilities.

A justice should dispose of all judicial matters promptly, efficiently, and fairly. A justice can be admonished for refusing to accept filings for cases that are properly within the court’s jurisdiction or unreasonably delaying in signing and issuing arrest warrants.

#### ***b. Adjudicative Responsibilities***

##### ***i. A Justice Must Hear All Matters Unless Disqualification is Required***

A justice of the peace shall hear and decide matters assigned to him, except those in which disqualification is required or recusal is appropriate.

**What if I don’t accept a case I should have?**

A justice *can be* admonished for refusing to accept filings for cases that are properly within the court’s jurisdiction.

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A justice should recuse himself from presiding over a case in which a defendant has civil actions pending against the justice in another court. *Judicial Opinion 172 (1994)*.

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##### ***ii. A Justice Must Be Faithful to and Competent in the Law***

A justice of the peace should be faithful to the law and must maintain professional competence in it. A justice must not be swayed by partisan interests, public clamor, or fear of criticism. He or she shall perform judicial duties without bias or prejudice.

### **iii. Order and Decorum Required**

A justice shall require order and decorum in proceedings before him, and shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the justice deals in an official capacity. Similar conduct should be required of lawyers, staff, court officials, and others subject to the justice's direction and control.

### **iv. No Bias or Prejudice by a Justice of the Peace, Attorneys, or Those Under the Justice's Control**

A justice shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not knowingly permit staff, court officials, and others subject to the justice's direction and control to do so. Lawyers appearing before the court are also required to refrain from exhibiting, by words or conduct, such bias or prejudice.

This requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceeding.

### **v. A Justice Must Not Comment About Cases**

A justice may not talk about the position he takes on a pending or impending proceeding which may come before the justice's court. This applies to a candidate for judicial office with respect to judicial proceedings pending or impending in the court in which the candidate would serve if elected. It does not apply to proceedings in which the justice or judicial candidate is a litigant in a personal capacity.

Similar abstention shall be required from court personnel who are subject to the justice's direction and control.

### **I can get in trouble for that?**

A justice can be reprimanded for addressing lawyers, litigants, witnesses, and others with indecorous and discourteous language, or for using racial or ethnic epithets from the bench.

A justice can also be reprimanded for losing his temper and abusing the court's contempt powers.

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Because a decision can be revisited, a justice may not write an opinion or editorial piece discussing his stated position on a case, or respond publicly to criticism of his actions in the case.

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### **vi. Justices of the Peace May Explain Court Procedure to the Public**

A justice of the peace is allowed to make public statements in the course of their official duties or explain, for public information, the procedures of the court.

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Justices may explain court procedure but may not discuss pending matters. **Judicial Opinion 209 (1997).**

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**vii. Disclosure of Nonpublic Information Unrelated to Judicial Duties is Prohibited**

A justice of the peace shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity. The discussions, votes, positions taken, and writings of justices and court personnel about cases are confidences of the court and shall be revealed only through a court’s judgment, or written opinion.

**c. Administrative Responsibilities**

**i. Administrative Duties Should Be Promptly Discharged**

Administrative responsibilities should be diligently and promptly discharged without bias or prejudice. Justices should maintain professional competence in judicial administration and cooperate with other judges and court officials in the administration of court business.

**ii. Staff and Court Officials Must Refrain from Bias and Prejudice**

Staff, court officials, and others subject to a justice of the peace’s direction and control should observe the same standards of fidelity and diligence that apply to the justice and should refrain from manifesting bias or prejudice in the performance of their official duties.

**iii. No Unnecessary Appointments, Nepotism, or Favoritism**

A justice shall not make unnecessary appointments and shall exercise the power of appointment impartially and on the basis of merit. A justice shall avoid nepotism and favoritism, and shall not approve compensation of appointees beyond the fair value of services rendered.

**iv. Justices of the Peace Must Comply with Rules Regarding Public Access to Records**

Rules regarding public access to judicial records, found in Rule 12 of the Rules of Judicial Administration and discussed in Chapter 9, must be followed. Failure to comply is a knowing violation of the rule.

**d. Disciplinary Responsibilities**

**i. A Justice Must Act if He or She Knows Another Judge Has Violated the Code**

A justice with information that clearly establishes that another judge or justice has committed a violation of this code should take appropriate action. A justice having knowledge that another judge or justice has committed a violation of this code that raises a substantial question as to the other judge’s fitness for office shall inform the State Commission on Judicial Conduct or take other appropriate action.

**ii. A Justice Must Act if He or She Knows an Attorney Has Violated Their Rules of Conduct**

A justice who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional

**Am I responsible for my staff’s actions?**

Yes! A justice of the peace can be sanctioned for his employees’ non-compliance with the judicial code. **Judicial Opinion 106 (1987).**

**Do I have to get involved?**

If a justice of the peace knows another judge, justice of the peace, or attorney has violated rules of conduct, the justice of the peace must take appropriate action.



Conduct should take appropriate action. A justice having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action.

#### **4. Canon 4 - Conducting the Justice's Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations**

A justice of the peace shall conduct all of his or her extra-judicial activities so that they do not cast reasonable doubt on the justice's capacity to act impartially as a justice, or interfere with the proper performance of judicial duties.

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A justice may not serve as a member of a Board of Directors of a non-profit corporation that trains volunteers and employs professional staff that are appointed by the justice to serve as guardians of incapacitated or minor persons because the qualifications and competence of a guardian must be determined and approved by the justice. A justice cannot rule on the qualifications and competence of an individual trained by a corporation if the justice is a member of the board of that corporation because such action creates an appearance of impropriety regarding the justice's capacity to act impartially. *Judicial Opinion 240 (1999)*.

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##### ***a. Speaking, Writing, and Teaching Allowed***

A justice of the peace may speak, write, lecture, teach, and participate in extra-judicial activities concerning:

- The law,
- The legal system,
- The administration of justice, and
- Non-legal subjects.

##### ***b. Justices Allowed to Serve on Boards Where Activities Are Related to the Improvement of Law***

A justice may also serve as a member, officer, or director of an organization or governmental agency devoted to:

- The improvement of the law,
- The legal system, or
- The administration of justice.

The justice may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He or she may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

**c. Civic or Charitable Activities**

A justice may participate in civic and charitable activities that do not reflect adversely upon the justice’s impartiality or interfere with the performance of judicial duties. A justice may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the profit of its members, subject to the following limitations:

- A justice should not serve if it is likely the organization will be engaged in proceedings that would ordinarily come before the justice or will be regularly or frequently engaged in adversary proceedings in any court,
- The justice shall not solicit funds for such an organization, but may be a speaker or a guest of honor at the organization’s fund raising events,
- A justice should not give investment advice, but may serve on the board of directors or trustees even though the board has the responsibility for approving investment decisions.

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The name of a justice of the peace who is director of a non-profit organization may appear on the letterhead as a director on a fund raising letter, but the justice may not serve as the chairperson of the annual fundraiser because the position of chairperson entails duties that are so connected to fundraising that it would constitute fundraising. *Judicial Opinion 245 (1999); Judicial Opinion 249 (1999).*

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A justice may serve on an Honorary Committee for a charity fund raiser as long as the justice does no actual fundraising since such a position is analogous to being a speaker or guest of honor. *Judicial Opinion 251 (1999).*

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A justice may appear on television in a Public Service Announcement for a non-profit organization asking people to volunteer their time so long as the prestige of the judicial office is not used. The justice may be identified as a justice of the peace, but should not appear in his robe because this would inappropriately lend the prestige of office to the activity. *Judicial Opinion 253 (1999).*

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**d. Financial Activities That Must Be Avoided**

A justice of the peace shall refrain from financial and business dealings that tend to:

- Reflect adversely on the justice’s impartiality,
- Interfere with the proper performance of judicial duties,
- Exploit his or her judicial position, or
- Involve the justice in frequent transactions with lawyers or persons likely to come before the justice’s court.

This limitation does not prohibit a justice or candidate from soliciting funds for appropriate campaign or officeholder expenses as permitted by state law.



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A justice may not portray a judge on a television show for compensation or be employed as a consultant sharing technical expertise with writers of such a show because that would be exploiting the judicial office for financial gain. Such activities are not prohibited if the justice is not paid, so long as all other portions of the judicial code are followed. *Judicial Opinion 204 (1997)*.

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### ***e. Gifts, Favors, and Loans Are Subject to Strict Guidelines***

Neither a justice of the peace nor a family member residing in the justice's household shall accept a gift, bequest, favor, or loan from anyone except as follows:

- Gifts incident to public honor of a justice, books and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to a justice and spouse to attend a bar-related function or activity devoted to the improvement of law, the legal system, or the administrations of justice are allowed,
- Ordinary social hospitality, a gift, bequest, favor, or loan from a relative, a gift from a friend for a special occasion such as a wedding, engagement, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship, a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges, or a scholarship or fellowship awarded on the same terms applied to other applicants may be accepted,
- Acceptance of any other gift, bequest, favor, or loan is allowed as long as the donor is not a party or person whose interests have come, or are likely to come, before the justice, and
- A gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or family member residing in the justice's household, including gifts, awards, and benefits for the use of both the spouse or family member and the justice as spouse or family member, provided the gift, award, or benefit could not reasonably be perceived as intended to influence the justice in the performance of judicial duties.

### **What if someone gives me a gift?**

Whether or not a gift can be accepted depends upon many factors such as:

- The type of gift,
- The amount of the gift, and
- The relationship between the justice and the person giving the gift

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Justices and court staff may not accept holiday or seasonal gifts from lawyers or law firms unless they are personal friends. Where a friendship exists, the gift must be commensurate with the occasion and relationship. Attending a holiday party at a law firm is allowed as long as the party is open to people other than judges and their staff. *Judicial Opinion 194 (1996)*.

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A justice who has suffered a catastrophic loss such as a house burning down may not accept gifts from lawyers or parties who have come or might come before the court, even if the gifts or donations were placed in a blind trust. *Judicial Opinion 215 (1997)*.

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***f. Service as Arbitrator or Mediator***

If a justice court has jurisdiction of a matter or of parties involved in arbitration or mediation, an active full-time justice of the peace shall not act as an arbitrator or mediator for compensation outside the judicial system, but may encourage settlement in the performance of official duties. This does not mean a justice of the peace can ask parties what they would accept to make a case go away. This means the justice can suggest the parties go to mediation or the parties and their attorneys try to work out the case before trial becomes a necessity.

***g. Practice of Law***

A justice of the peace who is not an attorney shall not practice law except in his or her capacity as a justice court judge. However, a justice may act pro se and may, without compensation, give legal advice to, and draft or review documents for a family member.

A justice of the peace who is an attorney may practice law, but must not appear in his or her own court as an attorney, or handle anything related to a case in which the justice has served as a judge.

***h. Compensation for Extra-Judicial Activities***

Compensation and reimbursement of expenses for permitted extra-judicial activities may be received by the justice, if the source of such payments does not give the appearance of influencing the justice's performance of judicial duties or otherwise give the appearance of impropriety. Compensation shall not exceed a reasonable amount, nor shall it exceed what a person who is not a judge would receive for the same activity.

Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the justice and, where appropriate to the occasion, by the justice's family. Any payment in excess of such an amount is compensation.

***i. Financial Reports Must Be Filed as Required by Law***

A justice of the peace shall file financial and other reports as required by law.

**5. Canon 5 - Refraining from Inappropriate Political Activity**

A justice of the peace or judicial candidate shall not:

- Make pledges or promises of conduct in office regarding pending or impending cases, specific classes of cases, specific classes of litigants, or specific propositions of law that would suggest that the justice is predisposed to a probable decision in cases within the scope of the pledge,
- Knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent, or

- Make a statement about pending or impending proceedings that may come before the justice’s court that suggests the justice’s probable decision in a specific case.

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A candidate for justice of the peace who is a former justice of the peace may not imply in his political advertising that he is a current justice of the peace. *Judicial Opinion 193 (1996)*.

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***a. A Justice of the Peace Can’t Publicly Endorse Another Candidate for Office***

A justice of the peace or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party.

A justice or judicial candidate may attend political events and express his or her views on political matters so long as he or she does not make a statement about pending or impending proceedings that may come before the justice’s court that suggests the justice’s probable decision in a specific case.

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A justice of the peace and constable’s association may not endorse candidates for political office even if the group contains some non-judicial members. *Judicial Opinion 224 (1998)*.

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***b. A Justice Must Resign if Running for a Non-Judicial Office in a Contested Election***

A justice of the peace shall resign from judicial office upon becoming a candidate in a contested election for a non-judicial office. A justice may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, or while being a candidate for election to any judicial office.

**6. Canon 6 - Compliance with the Code of Judicial Conduct**

***a. Ex Parte Communications***

A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider *ex parte* or other communications concerning the merits of a pending judicial proceeding.

This does not prohibit communications concerning:

- Uncontested administrative matters,
- Uncontested procedural matters,
- Magistrate duties and functions,
- Determining where jurisdiction of an impending claim or dispute may lie,
- Determining whether a claim or dispute might more appropriately be resolved in some other judicial or non-judicial forum,

- Mitigating circumstances following a plea of nolo contendere or guilty for a fine-only offense, or
- Any other matters where *ex parte* communications are contemplated or authorized by law.

***b. Temporary Justices Must Abide by the Code***

A temporary justice, while acting as such, shall comply with all provisions of this Code applicable to the court on which he or she is serving, and after serving as a temporary justice, should not act as a lawyer in a proceeding in which he or she has served or in any other related proceeding.

***c. Applicability of the Code to Judicial Candidates***

Any person seeking elective judicial office shall be subject to the same standards regarding inappropriate political activity that are required of members of the judiciary.

***d. Violations of the Code***

Any justice of the peace who violates this Code shall be subject to sanctions by the State Commission on Judicial Conduct. Any lawyer who is a candidate seeking judicial office who violates the provisions regarding inappropriate political activity or other relevant provisions of this Code is subject to disciplinary action by the State Bar of Texas.

The conduct of any other candidate for elective judicial office who is not a justice of the peace or attorney who violates the provisions regarding inappropriate political activity other relevant provisions of the Code is subject to review by the Secretary of State, the Attorney General, or the local District Attorney for appropriate action.

**What happens if I violate the Code?**

Any justice of the peace who violates this Code shall be subject to sanctions by the State Commission on Judicial Conduct.

**7. Canon 7 – Effective Date of Compliance**

A justice of the peace should arrange his or her affairs as soon as reasonably possible to comply with the Code.

**8. Canon 8 – Construction and Terminology of the Code**

***a. The Code Establishes Basic Standards for Ethical Conduct***

The Code of Judicial Conduct is intended to establish basic standards for ethical conduct of judges. The sections are rules of reason, which should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law and in the context of all relevant circumstances.

***b. The Code is Not Intended to Hinder Judges’ Decision Making Abilities***

The Code is to be construed so as not to hinder the essential independence of judges in making judicial decisions.

***c. The Code is Designed to Provide Guidance and Structure***

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through the State Commission on Judicial Conduct. It is not



KEY POINT

designed or intended as a basis for civil liability or criminal prosecution. The purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in proceeding.

#### ***d. Disciplinary Action Dependent Upon Multiple Factors***

It is not intended that every transgression will result in disciplinary action. Whether disciplinary action is appropriate and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as:

- The seriousness of the transgression,
- Whether there is a pattern of improper activity, and
- The effect of the improper activity on others or on the judicial system.

#### ***e. Terminology***

“Shall” or “shall not” indicates required obligations which can result in disciplinary action if violated. “Should” or “should not” relates to aspirational goals and as a statement of what is or is not appropriate conduct, but is not a binding rule under which a judge may be discipline. “May” denotes permissible discretion or, depending on the context, refers to action that is not covered by specific prohibitions.

### Terminology

- “Shall” or “shall not” - required obligations which can result in disciplinary action if violated.
- “Should” or “should not” - conduct that is or is not appropriate, but is not a binding rule under which a judge may be disciplined.

## **B. Disqualification**

Justices of the peace may be removed from a particular case because they are constitutionally disqualified from hearing a case or because they are subject to statutory prohibitions that prevent them from hearing it. *Texas Constitution Art. 5§11; Government Code §27.055.*

### **1. When is a Justice of the Peace Disqualified?**

A justice of the peace is disqualified from any proceeding or stage of litigation in which:

- The justice served at any time as a lawyer for the matter in controversy, or a lawyer the justice previously practiced law with is a lawyer for the matter in controversy,
- The justice knows that, individually or as a fiduciary, the justice has an interest in the subject matter in controversy, or
- Any of the parties to the case may be related to the justice by affinity or consanguinity within the third degree.

*Texas Constitution Art. 5§11; Government Code §27.055; Texas Rules of Civil Procedure Rule 18b(a).*

#### ***a. Who is a Fiduciary?***

Fiduciary includes relationships such as executor, administrator, trustee, or guardian. *Texas Rules of Civil Procedure Rule 18b(d)(3).*



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### ***b. What Counts as a Financial Interest?***

A financial interest is ownership of an interest, no matter how small, or a relationship as director, advisor, or other active participant in the affairs of a party.

Situations that don't count as financial interests:

- Ownership in a mutual or common investment fund that holds securities does not create a financial interest in those securities unless the justice participates in the management of the fund,
- An office in an educational, religious, charitable, fraternal, or civic organization does not have a financial interest in securities held by the organization,
- The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest creates a financial interest in the organization only if the outcome of the court proceeding could substantially affect the value of the interest,
- Ownership of government securities creates a financial interest in the issuer only if the outcome of the court proceeding could substantially affect the value of the securities,
- An interest as a taxpayer or utility ratepayer, or any similar interest, does not create a financial interest unless the outcome of the court proceeding could substantially affect the liability of the justice or a person related to him within the third degree, more than the liability of other judges or justices.

*Rules of Civil Procedure Rule 18b(d)(4).*

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The interest which disqualifies a judge is “that interest, however small, which rests upon a direct pecuniary or personal interest in the result of the case presented to the judge or court.” *Cameron v. Greenhill*.

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### ***c. Who is a Party to a Case?***

The term “party” includes all people directly interested in the subject matter and result of the suit, whether or not their names appear in the record.

### ***d. Consanguinity***

Two individuals are related to each other by consanguinity if they are related by blood because one is a descendant of the other, or they share a common ancestor. *Government Code §573.022(a)*. An adopted child is considered a natural child of the adoptive parent for purposes of determining consanguinity. *Government Code §573.022(b)*.

#### ***i. Degree of Consanguinity Determined by Generations that Separate Them***

The degree of consanguinity between an individual and the individual's descendant is determined by the number of generations that separate them.

- A parent and child are related in the first degree,
- A grandparent and grandchild in the second degree,

- A great-grandparent and great-grandchild in the third degree and so on.

*Government Code §573.023(a).*

**ii. Consanguinity of People Not Descended from Each Other**

If an individual and the individual’s relative are related by consanguinity, but neither is descended from the other, the degree of relationship is determined by adding the number of generations between the individual and the nearest common ancestor of the individual to the number of generations between the relative and the nearest common ancestor. *Government Code §573.023(a).* See example.

**iii. Relatives Within the Third Degree by Consanguinity**

An individual’s relatives within the third degree by consanguinity are the individual’s:

- Relatives in the first degree: a parent or child,
- Relatives in the second degree: a brother, sister, grandparent, or grandchild, and
- Relatives in the third degree: a great-grandparent, great-grandchild, aunt who is a sister of the individual’s parent, uncle who is a brother of the individual’s parent, nephew who is a child of the individual’s brother or sister, or niece who is a child of the individual’s brother or sister.

*Government Code §573.023(c).*

**e. Affinity**

Two individuals are related to each other by affinity if they are married to each other, or the spouse of one of the individuals is related by consanguinity to the other individual. *Government Code §573.024(a).*

Ending of a marriage by divorce or death of a spouse ends relationships by affinity created by that marriage, unless a child of that marriage is living. In that case, the marriage is considered to continue as long as a child of that marriage lives. *Government Code §573.024(b).*

**ii. Relationships by Affinity**

A husband and wife are related to each other in the first degree by affinity. For other relationships by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity.

If two individuals are related to each other in the second degree by consanguinity, the spouse of one of the individuals is related to the other individual in the second degree by affinity. See example. *Government Code §573.025(a).*

**Common Ancestor  
Consanguinity  
Example:**

Bob and Sally are cousins.

Bob’s father and Sally’s mother are brother and sister.

The nearest common ancestor between Bob and Sally are their grandparents.

Bob is a relative in the second degree of their grandparents.

Sally is also a relative in the second degree of their grandparents.

Therefore, **Bob and Sally are relatives in the fourth degree** since you add Bob’s degree of relationship to their grandparents with Sally’s degree of relationship with their grandparents.

### iii. Relatives Within the Third Degree by Affinity

An individual's relatives within the third degree by affinity are:

- Anyone related by consanguinity to the individual's spouse as determined for consanguinity in the third degree, and
- The spouse of anyone related to the individual by consanguinity as determined for consanguinity in the third degree.

*Government Code §573.025(b).*

### f. Consanguinity and Affinity Charts

A chart depicting the degrees of consanguinity and affinity can be found on page 133.

## 2. Transfer of a Case When a Justice is Disqualified

### a. Transfer of Civil Cases

In a civil case, a justice of the peace may hold court for any other justice of the peace in any Texas county at the request of that justice. *Government Code §27.054(a)*. Transfer of cases and bench exchanges are discussed in depth on pages 19-22.

### b. Transfer of Criminal Cases

If a justice of the peace is disqualified from sitting in any part of a criminal action pending before him, he must transfer the case to any justice of the peace in the county who is not disqualified. *Code of Criminal Procedure Art. 30.07*. The rules that govern transfer of criminal cases from district courts to inferior courts also govern transfer of cases from justice court. *Code of Criminal Procedure Art. 30.08*.

### c. Information to be Included in the Transfer Order

The transfer order needs to state:

- The reason for the transfer,
- The name of the court the case is being transferred to, and
- The time and place where the parties and witnesses need to appear.

Disqualification of the justice must also be noted on the docket. *Government Code §27.055(a)*.

### d. Judgement Void if Rendered by a Disqualified Justice

If a disqualified justice of the peace renders a judgment on a case, the judgment is void. *Harrison v. Lokey*.

### e. If A Justice Can't Hear a Case, the Parties May Agree on Someone to Try the Case

If a justice of the peace is disqualified from a case, the parties can agree on a person to try the case. If the parties can't agree on a person at the first court setting after service is perfected, the county judge

## Affinity Examples:

Example 1: Susie is married to David. Susie and David are related to each other by affinity.

Example 2: Susie is married to David. David's brother is Ted. Because David and Ted are related by consanguinity, Susie and Ted are related by affinity.

Example 3: Because David and Ted are related to each other in the second degree of consanguinity, **Susie and Ted are related in the second degree of affinity.**



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will appoint a qualified person to try the case upon request of the justice of the peace or either party. *Government Code §27.055(a)*.

## C. Recusal

Recusal from a case occurs when a justice of the peace is not statutorily prohibited from hearing the case, but the justice's relationship to some of the parties involved, or the nature of the case, may cast doubt upon the justice's ability to rule objectively.

### 1. Grounds for Recusal

A justice must recuse himself from any proceeding in which:

- The justice's impartiality might reasonably be questioned,
- The justice has a personal bias or prejudice concerning the subject matter or a party,
- The justice has personal knowledge of disputed evidentiary facts in the proceeding,
- The justice or a lawyer with whom the justice previously practiced law has been a material witness in the proceeding,
- The justice participated as counsel, advisor, or material witness in the matter in controversy, or expressed an opinion concerning the merits of it while acting as an attorney in government service,
- The justice knows that he, individually or as a fiduciary, or the justice's spouse or minor child residing in the justice's household, has a financial interest in the subject matter in controversy, in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding,
- The justice, the justice's spouse, a person within the third degree of relationship to either of them, or the spouse of such a person:
  - Is a party to the proceeding or an officer, director, or trustee of a party,
  - Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding, or
  - Is, to the justice's knowledge, likely to be a material witness in the proceeding, or
- The justice, the justice's spouse, a person within the first degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding.

*Texas Rules of Civil Procedure Rule 18b(b)(1)-(8)*.

#### ***a. A Justice Should Have Knowledge of His or Her Financial Interests and His or Her Spouse's***

A justice of the peace should inform himself about personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in the household. *Texas Rules of Civil Procedure Rule 18b(c)*.

## Disqualification V. Recusal

Disqualification: Constitution or statute specifically says the justice cannot hear the case due to his or her relationship with some part of, or party to, the case.

Recusal: the justice isn't prohibited from hearing the case, but hearing it could cast doubt upon the justice's ability to rule objectively due to a justice's relationship to a party, or the nature of the case.



### ***b. Recusal Not Required if a Justice Divests Himself or Herself of a Financial Interest Requiring Recusal***

If a justice of the peace does not discover that he or she is recused from a case due to financial interests or other interests that could be substantially affected by the outcome of the proceeding until after the justice of the peace has devoted substantial time to the matter, the justice is not required to recuse himself or herself if the justice or the person related to the justice divests himself or herself of the interest that would otherwise require recusal. *Texas Rules of Civil Procedure Rule 18b(f)*.

This applies to situations where one of the following people has a financial interest in the subject matter in controversy, in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding:

- The justice, individually or as a fiduciary,
- The justice's spouse,
- A minor child residing in the justice's household,
- A person related within the third degree of consanguinity or affinity to the justice or the justice's spouse, or
- The spouse of a person related within the third degree of consanguinity or affinity to the justice.

## **Can disqualification or recusal be waived?**

Disqualification: parties can't waive grounds for disqualification and a judgment is void if a disqualified justice renders it.

Recusal: parties can waive grounds for recusal after the reason is disclosed.



KEY  
POINT

## **2. Parties Can Waive Grounds for Recusal**

The parties to a proceeding may waive any ground for recusal after it is fully disclosed on the record. *Texas Rules of Civil Procedure Rule 18b(e)*.

## **3. A Temporary Justice Can Be Appointed if a Justice is Unavailable Due to Recusal**

Judges who are unable to hear a case due to recusal can transfer the case or exchange benches with another justice of the peace in his or her county. Additionally, if a justice is temporarily unable to perform official duties because of recusal, the county judge on his own motion or at the request of the justice of the peace, may appoint a qualified person to serve as temporary justice. *Government Code §27.055(b)*. [Transfer of cases and bench exchanges are discussed in depth on pages 19-22.](#)

## **D. Nepotism**

Nepotism is when a person in a position of power or influence shows favoritism to relatives or friends, especially by giving or appointing them to jobs.

### **1. No Appointment or Confirmation of Appointment of Relatives**

A justice of the peace may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds or fees of office if:

- The individual is related to the justice of the peace by consanguinity, or
- The justice of the peace holds the appointment or confirmation authority as a member of a state or local board, the legislature, or a court and the individual is related to another member of that board, legislature, or court by consanguinity.

*Government Code §573.041.*

## **2. When Appointment or Confirmation of Appointment of Relatives is Allowed**

A nepotism prohibition does not apply to an appointment, confirmation of an appointment, or vote for an appointment or confirmation of an appointment of an individual to a position if:

- The individual is already employed before the justice of the peace the individual is related to is elected or appointed, and
- Prior employment of the individual is continuous for at least
  - 30 days if the justice is appointed,
  - Six months if the justice is elected at an election other than the general election for state and county officers, or
  - One year if the justice is elected at the general election for state and county officers.

*Government Code §573.062(a).*

If an individual continues in a position, the justice of the peace to whom the individual is related, may not participate in any deliberation or voting on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of the individual, if that action applies only to the individual and is not taken regarding a bona fide class or category of employees. *Government Code §573.062(b).*

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A justice of the peace cannot appoint or vote for the appointment of a child or someone they are related to by blood such as a brother, sister, aunt, uncle, cousin, or parent.

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## **3. Removal from Office for Violating Nepotism Laws**

An individual who violates the laws regarding nepotism shall be removed from the individual's position. Removal must be made in accordance with any removal provisions in the Constitution if applicable. If the Constitution does not govern the removal, the removal is governed by Section 573.081, Government Code. *Government Code §573.081(a).*

Removal from a position shall be made immediately and summarily if a criminal conviction against the appointee for a violation of the nepotism laws becomes final. *Government Code §573.081(b).*



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## **E. Campaigns and Contributions**

### **1. Political Contributions Cannot Be Converted to Personal Use**

A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. *Election Code §253.035(a).*

## 2. Code of Fair Campaign Practices

### a. Purpose of the Code of Fair Campaign Practices

The legislature has created a Code of Fair Campaign Practices to encourage every candidate to follow the basic principles of decency, honesty, and fair play during their campaign. This was done to encourage healthy competition, open discussion of issues and candidate qualifications, and to discourage practices that cloud the issues or unfairly attack opponents. *Election Code §258.002.*

### b. Subscription to the Code of Fair Campaign Practices is Voluntary

Subscription to the Code of Fair Campaign Practices is voluntary, however it is the intent of the legislature that every candidate will subscribe to the Code. When a candidate files its campaign treasurer appointment, the candidate will receive a blank Code of Fair Campaign Practices the candidate can sign and return to the authority with whom the campaign treasurer appointment is filed. *Election Code §258.003.*

### c. A Candidate Can Advertise Their Subscription to the Code if They Have Filed a Signed Copy

A candidate that has filed a signed copy of the Code of Fair Campaign Practices may indicate their subscription on their political advertising. *Election Code §258.008.*

### d. Code of Fair Campaign Practices Pledge Promises

The Code of Fair Campaign Practices pledge includes promises to:

- Conduct the campaign openly, publicly, and limit attacks on opponents to legitimate challenges to the opponents' records and stated positions on issues,
- Avoid the use of character defamation, whispering campaigns, libel, slander, or scurrilous attacks on any candidate or the candidate's personal or family life,
- Avoid any appeal to negative prejudice based on race, sex, religion, or national origin,
- Avoid the use of campaign material of any sort that misrepresents, distorts, or otherwise falsifies the facts, as well as avoiding the use of malicious or unfounded accusations that aim at creating or exploiting doubts, without justification, as to the personal integrity or patriotism of an opponent,
- Avoid and not condone any dishonest or unethical practice that tends to corrupt or undermine the system of free elections or that hampers or prevents the full and free expression of the will of the voters, including any activity aimed at intimidating voters or discouraging them from voting,
- Defend and uphold the right of every qualified voter to full and equal participation in the electoral process, and not engage in any activity aimed at intimidating voters or discouraging them from voting,



KEY  
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**Do I have to  
subscribe to the  
Code of Fair  
Campaign  
Practices?**

No! Subscription to the Code of Fair Campaign Practices is voluntary.

But it is the legislature's intent that every candidate subscribes to the Code.

- Immediately and publicly repudiate methods and tactics that may come from others, and taking firm action against any subordinate who violates any provision of the code or laws governing elections.

*Election Code §258.004.*

***e. Code of Fair Campaign Practices Form***

**A Copy of the Code of Fair Campaign Practices form can be located on the Texas Ethics Commission website [here](#).**

# CHAPTER 7: LIABILITY

## A. Civil Liability

A justice of the peace can face civil liability based on actions taken in his or her capacity as justice of the peace. He or she can be sued by the public as well as employees. In some instances, the justice's actions can result in civil and criminal liability.

### 1. How Can a Justice of the Peace Be Sued?

A justice of the peace can be sued in his or her individual capacity and in his or her official capacity.

### 2. Definition of Public Servant for Civil Liability

For purposes of civil liability and responsibility, a public servant means a person who is:

- A public official elected or appointed to serve a governmental unit, and
- Acting in that capacity when the act or omission on which the damages were based occurred, or
- A person who is covered by §104.001 or §102.001, Civil Practice and Remedies Code.

*Civil Practice and Remedies Code §108.001(1).*

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A state employee sued in his individual capacity is personally liable for any judgment rendered against him, however he may also be entitled to raise the affirmative defense of qualified immunity. *Gonzalez v. Avalos.*

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If a state employee is sued in his official capacity and a judgment is rendered against him, the judgment is paid by the state. An employee sued in his official capacity may raise any defense available to the state, including sovereign immunity.

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#### ***a. Civil Practice and Remedies Code §104.001***

Chapter 104 of the Civil Practice and Remedies Code governs state liability for conduct of public servants. A person covered under §104.001 is an employee, a member of the governing board, or any other officer of a state agency, institution, or department. *Civil Practice and Remedies Code §104.001(1).*

#### ***b. Civil Practice and Remedies Code §102.001***

Chapter 102 of the Civil Practice and Remedies Code governs tort claims payments by local governments. A person covered under §102.001 is an officer, volunteer, or employee of a local government. *Civil Practice and Remedies Code §102.001(1).*

### 3. Immunity and Limitations

#### a. Absolute Judicial Immunity



KEY  
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Absolute Immunity is a tool designed to allow judges the ability to effectively perform their job. A judge acting in his or her official judicial capacity enjoys absolute immunity from liability for judicial acts performed within the scope of their jurisdiction. *Stump v. Sparkman*.

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"Judges enjoy absolute judicial immunity from liability for judicial acts, no matter how erroneous the act or how evil the motive, unless the act is performed in the clear absence of all jurisdiction." *Alpert v. Gerstner*.

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#### i. Immunity When Acting in the Course of a Judicial Proceeding

A justice of the peace is entitled to absolute judicial immunity as long as the judge acts:

- Within his or her judicial capacity, and
- Within his or her jurisdiction.

Immunity applies even when the judge is accused of acting corruptly or maliciously.

#### ii. Factors Used to Determine if an Act is a Judicial One

The factors considered in determining whether a justice's act is a judicial one are whether:

- The act complained of is one normally performed by a judge,
- The act occurred in the courtroom or an appropriate adjunct such as the judge's chambers,
- The controversy centered around a case pending before the judge, and
- The act arose out of a visit to the judge in his judicial capacity.

In determining whether the act was clearly outside a judge's jurisdiction for judicial immunity purposes, the focus is on the nature of the function performed, not the identity of the actor. *Delcourt v. Silverman*.

**Immunity  
Available to a  
justice of the  
peace:**

- Judicial immunity – immunity when acting in his or her judicial capacity
- Qualified immunity – affirmative defense for government employees sued in their individual capacity

---

Texas judges have absolute immunity for their judicial acts "unless such acts fall clearly outside the judge's subject-matter jurisdiction." *Spencer v. City of Seagoville*.

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#### b. Qualified Immunity

Qualified immunity is an affirmative defense available to government employees sued in their individual capacities that renders them immune from liability and suit. If an official, including a

justice of the peace, is performing administrative tasks not integrally associated with the judicial process, but necessary nonetheless, then qualified immunity may still apply even if judicial immunity doesn't.

### ***i. Justification for the Qualified Immunity Doctrine***

The justification for the qualified immunity doctrine is that “public officials performing discretionary functions should be free to act without fear or retributive suits for damages except when they should have understood that particular conduct was unlawful.” *EPISD v. McIntyre*.

“Qualified immunity shields officials from civil liability so long as their conduct ‘does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.’” *Mullenix v. Luna*.

### **Other Names for Qualified Immunity:**

- Official immunity,
- Quasi-judicial immunity,
- Discretionary immunity, or
- Good faith immunity

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The qualified immunity defense should prevail unless the unlawfulness of the challenged conduct was apparent when undertaken. *EPISD v. McIntyre*.

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### ***ii. Government Officials Entitled to Immunity If Acting Within the Scope of Authority***

Government employees are entitled to qualified immunity from suit arising from performance of their discretionary duties in good faith, so long as they are acting within the scope of their authority. *Richardson v. Parker*. Public officials act within the scope of their authority if they are discharging the duties generally assigned to them.

### ***c. Public Officials Held Accountable Other Ways***

Public officials are accountable through elections, state criminal and civil statutes, federal causes of action, and other mechanisms to police the conduct of public officials. *Ballantyne v. Champion Builders*.

### ***d. Limitations on Civil Liability***

A public servant is not personally liable for damages in excess of \$100,000 arising from property damage, personal injury, death, or deprivation of a right, privilege, or immunity if:

- The damages are the result of an act or omission by the public servant in the course and scope of the public servant's office, employment, or contractual performance for or on behalf of a state agency, institution, department, or local government, and
- For the amount less than \$100,000, the public servant is covered by
  - The state's obligation or authorization to indemnify,
  - Liability or errors and omissions insurance, or
  - Liability or errors and omissions coverage under an interlocal agreement.

This protection does not apply to actions arising under the Constitution or laws of the United States. *Civil Practice and Remedies Code §108.002(a)*.



### ***e. Justices of the Peace May Be Entitled to Representation***

A county official sued by anyone other than the county with which the official serves, for an action arising from the performance of public duty is entitled to be represented by the district or county attorney. *Local Government Code §157.901(a)*. If additional counsel is necessary or proper, or if it reasonably appears the act complained of may form the basis for the filing of a criminal charge against the official, the official is entitled to have the commissioners court employ and pay private counsel. *Local Government Code §157.901(b)*.

A county official is not required to accept the legal counsel provided. *Local Government Code §157.901(c)*.

## **4. Actions for Which a Justice Can Be Held Civilly Liable**

### ***a. Retaliation Prohibited for Reporting Violation of Law***

A state or local governmental entity may not suspend or terminate the employment of, or take other adverse personnel action against, a public employee who in good faith reports a violation of law by the employing governmental entity or another public employee to an appropriate law enforcement authority. *Government Code §554.002(a)*.

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“Personnel action” means an action that affects a public employee’s compensation, promotion, demotion, transfer, work assignment, or performance evaluation.  
*Government Code §554.001(3)*.

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### ***i. An Employee Who Suffers Retaliation May Sue***

An employee whose employment is suspended, terminated, or who is subjected to an adverse personnel action is entitled to sue for:

- Injunctive relief,
- Actual damages,
- Court costs,
- Reasonable attorney fees,
- Reinstatement to the employee’s former position or an equivalent position,
- Compensation for wages lost during the period of suspension or termination,
- Reinstatement of fringe benefits and seniority rights lost because of the suspension or termination, and
- Compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and other nonpecuniary losses capped based on the total number of employees.

*Government Code §554.003(a)-(b)*.



### **ii. Civil Penalties to Be Paid by the Supervisor**

A supervisor who suspends or terminates the employment of a public employee or takes an adverse personnel action against the employee is liable for a civil penalty not to exceed \$15,000. *Government Code §554.008(a)*.

A civil penalty assessed under this section shall be paid by the supervisor and may not be paid by the employing governmental entity. *Government Code §554.008(d)*.

### **iii. Personal Liability of the Supervisor Limited to the Civil Penalty**

The personal liability of a supervisor is limited to the civil penalty that may be assessed. *Government Code §554.008(e)*.

### **b. Firearm Liability**

#### **i. An Employer Cannot Prohibit Lawfully Possessed Firearms in a Parking Lot**

A public or private employer may not prohibit an employee who:

- Holds a license to carry a handgun,
- Otherwise lawfully possesses a firearm, or
- Lawfully possesses ammunition,

from transporting or storing a firearm or ammunition the employee is authorized by law to possess in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the employer provides for employees. *Labor Code §52.061*.

#### **ii. When the Right to Possess a Firearm in a Parking Lot Doesn't Apply**

Section 52.061 does not:

- Authorize a person who holds a license to carry a handgun, who otherwise lawfully possesses a firearm, or who lawfully possesses ammunition to possess a firearm or ammunition on any property where the possession of a firearm or ammunition is prohibited by state or federal law, or
- Apply to a vehicle owned or leased by a public or private employer and used by the employee in the course and scope of the employee's employment, unless the employee is required to transport or store a firearm in the official discharge of the employee's duties.

*Labor Code §52.062(a)*.

#### **iii. An Employer Can Prohibit a Firearm on the Employer's Premises**

Section 52.061 does not prohibit an employer from prohibiting an employee who holds a license to carry a handgun, or who otherwise lawfully possesses a firearm, from possessing a firearm on the premises of the employer's business. *Labor Code §52.062(b)*.

#### **iv. Employer Not Liable for Occurrences Involving a Firearm Unless there was Gross Negligence**

Except in cases of gross negligence, a public or private employer is not liable in a civil action for personal injury, death, property damage, or other damages resulting from or arising out of an occurrence involving a firearm or ammunition that the employer is required to allow on the



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employer's property. The presence of a firearm or ammunition on an employer's property does not by itself constitute a failure by the employer to provide a safe workplace. *Labor Code §52.063*.

### ***c. Required Financial Reporting***

#### ***i. Determination of Whether a Person Was Required to File a Financial Statement and Failed to Do So***

Upon receipt of a written notice that a person required to file a financial statement failed to do so, the county or criminal district attorney shall determine if the person failed to file a statement. On making that determination, the county or criminal district attorney shall immediately mail by certified mail a notice of the determination to the person who was required to file a financial statement. *Local Government Code §159.010(b)*.

#### ***ii. Penalty for Failing to File the Statement After Receiving Notice***

If the person responsible for filing the statement fails to file the statement within 30 days of receiving notice from the county or criminal district attorney, the person is civilly liable to the county for an amount not to exceed \$1,000. *Local Government Code §159.010(c)*.

### ***d. Prohibited Discriminatory Employment Practices***

Title VII of the Civil Rights Act of 1964 and Title 1 of the Americans with Disabilities Act of 1990 apply to all elected officials in Texas.

#### ***i. An Individual Elected to Public Office is an Employer***

Employer specifically includes:

- An individual elected to public office, and
- A county, municipality, state agency, or state instrumentality, regardless of the number of individuals employed.

*Labor Code §21.002(8)*.

#### ***ii. Definition of Disability for Purposes of Discriminatory Employment Practices***

Disability means:

- A mental or physical impairment that substantially limits at least one major life activity of that individual,
- A record of such an impairment, or
- Being regarded as having such an impairment.

The term does not include:

- A current condition of addiction to the use of alcohol, drugs, illegal substances, or a federally controlled substance, or
- A currently communicable disease or infection that constitutes a direct threat to the health or safety of other persons, or that makes the affected person unable to perform the duties of the person's employment.



### **Person with a Disability:**

Someone:

- With a mental or physical impairment that substantially limits at least one major life activity of that individual,
- With a record of such an impairment, or
- Who is regarded as having such an impairment

*Labor Code §21.002(6).*

The term shall be construed in favor of broad coverage to the maximum extent allowed and includes an impairment that is episodic or in remission that substantially limits a major life activity when active. *Labor Code §21.0021(a).*

**iii. Definition of Qualified Individual with a Disability**

A Qualified individual with a disability is a person:

- Who meets legitimate skill, experience, education, or other requirements of an employment position that he holds or seeks, and
- Who can perform the “essential functions” of the position with or without reasonable accommodation.

**iv. Failure to Hire and Segregation of an Employee Are Unlawful Employment Practices**

An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age, the employer:

- Fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment, or
- Limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee.

*Labor Code §21.051.*

**v. Retaliation and Discrimination Are Unlawful Employment Practices**

An employer commits an unlawful employment practice if the employer retaliates or discriminates against a person who:

- Opposes a discriminatory practice,
- Makes or files a charge,
- Files a complaint, or
- Testifies, assists, or participates in any manner in an investigation, proceeding, or hearing.

*Labor Code §21.055.*

**vi. An Elected Official Can't Discriminate Against an Employee**

It is an unlawful employment practice for a person elected to public office to discriminate against an employee, or applicant for employment, who:

- Serves on the elected official's personal staff,

**Discriminatory  
Employment  
Practice  
Examples:**

- Refusal to hire based on race, color, or disability,
- Segregation due to race, color, or disability, and
- Retaliation against someone who reports discriminatory employment practices, and
- Refusal to make reasonable workplace accommodations

- Serves the elected official on a policy-making level, or
- Serves the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

*Labor Code §21.126.*

***vii. It Is an Unlawful Employment Practice to Refuse to Make Reasonable Workplace Accommodations Without a Showing of Undue Hardship***

It is an unlawful employment practice to fail, or refuse to make, a reasonable workplace accommodation to a known physical or mental limitation of an otherwise qualified individual with a disability who is an employee or applicant for employment, unless the employer demonstrates that the accommodation would impose an undue hardship on the operation of the business. Labor Code §21.128(a).

A showing of undue hardship by the employer is a defense to a complaint of discrimination Labor Code §21.128(b).

***viii. Civil Action Can Be Brought if Efforts to Resolve Unlawful Employment Practices Are Unsuccessful***

The Texas Workforce Commission may bring a civil action against an employer if efforts to resolve the discriminatory practice to the satisfaction of the employee and employer through conciliation have been unsuccessful. *Labor Code §21.251.*

***ix. What Happens When an Employer Has Been Found to Have Engaged in an Unlawful Employment Practice?***

Upon a finding that an employer engaged in an unlawful employment practice as alleged in the complaint, a court may:

- Issue an injunction prohibiting the employer from engaging in an unlawful employment practice and order additional equitable relief as appropriate, including but not limited to:
  - Hiring or reinstating with or without back pay,
  - Upgrading an employee with or without pay, or
  - Admitting to or participating in a guidance program, on-the-job training, or retraining program, or
- Award compensatory and punitive damages.

*Labor Code §21.258.*

***x. Compensatory Damages***

Compensatory damages can include:

- Current and future pecuniary losses,
- Emotional pain,
- Suffering,
- Inconvenience,
- Mental anguish, and

**When an Employer Has Engaged in Unlawful Employment Practices:**

A court can:

- Issue an injunction against the employer and order equitable relief, or
- Award compensatory and punitive damages payable by the employer

- Loss of enjoyment of life

*Labor Code §21.2585(d).*

**xi. Damages Capped**

The sum of compensatory and punitive damages are capped based on the total number of employees. *Labor Code §21.2585(d).*

**e. A Person Who Violates Campaign Contribution Laws and Restrictions is Liable for Damages**

A person who knowingly makes or accepts a campaign contribution, or makes a campaign expenditure, in violation of the laws regarding campaign contributions and restrictions (Election Code Chapter 253) is liable to:

- Opposing candidates for damages, and
- The state for damages in the amount of triple the value of the unlawful contribution or expenditure.

*Election Code §253.131(a); Election Code §253.133.*

Civil penalties can be imposed in addition to criminal penalties or other sanction imposed by law. *Election Code §253.134.*

**f. Liability for a Justice of the Peace Acting as Ex Officio Notary Public**

To avoid liability, an ex officio notary must faithfully execute the duties of the office by strictly following the requirements of the statutes when taking an acknowledgment.

An ex officio notary public may be civilly liable for official misconduct or negligence.  
*Couch v. Babb; Sitton v. American Insurance Co.*

**g. Overcharging of Fees**

**i. Liability if an Officer Acts in Bad Faith**

An officer who in bad faith demands and receives a higher fee than authorized, or a fee that is not authorized, is liable to the aggrieved person for four times the amount unlawfully demanded and received. *Local Government Code §118.801(a).* A party may recover attorney’s fees, interests, or costs of court as well. *Local Government Code §118.801(e).*

Bad faith includes a demand that an officer makes with the knowledge that a fee is not authorized by law. *Local Government Code §118.801(d).*

**ii. Liability if an Officer Acts in Good Faith**

An officer who in good faith demands and receives a higher fee than authorized or a fee not authorized is liable to the aggrieved person for



**Liability for Collecting Fees:**

The amount of damages an officer is liable for when collecting fees improperly depends upon whether he or she was acting in good or bad faith.

the difference between the amount demanded and received and the amount of the fee authorized. *Local Government Code §118.801(b)*. The demand for and receipt of a fee authorized by the legislature that is later determined to be unlawful is considered to be a good faith action by the officer. *Local Government Code §118.801(c)*.

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An elected official will be held personally responsible for any shortages or misappropriation of funds coming into the office. **Op. Tex. Att’y. Gen. No. JM-517 (1986)**.

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## B. Criminal Liability

Justices of the peace can be prosecuted for any and all crimes they engage in. The crimes discussed in this section apply specifically to justices of the peace acting in their official capacity when the offense is committed, or who face criminal liability due to their position as a public servant.

### 1. Theft

#### ***a. Offense Committed When a Person Takes the Property of Another***

A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of that property. *Penal Code §31.03*.

#### ***b. Punishment Enhanced If the Person Is a Public Servant***

Punishment for an offense is increased to the next higher category of offense if it is shown at trial that the actor was a public servant at the time of the offense, and the property appropriated came into the actor’s custody, possession, or control by virtue of his status as a public servant. *Penal Code §31.03(f)*.

For example:

- A Class C misdemeanor becomes a Class B misdemeanor if the value of the property stolen is less than \$100,
- A Class B misdemeanor becomes a Class A misdemeanor if the value of the property stolen is \$100 or more but less than \$750, or the defendant has previously been convicted of theft, and
- So on up through a second degree felony becoming a first degree felony.

A felony of the first degree remains a felony of the first degree for stolen property with a value of \$300,000 or more.

For a list of all the ways theft can be committed and their degree of punishment, see Penal Code Section 31.03(e).

**Are these the only crimes I can be charged with?**

No! A justice of the peace can be charged with any crime they commit.

Only crimes committed while a justice is acting in their official capacity are discussed here.

## 2. Bribery

### ***a. Offense Committed When a Person Intentionally or Knowingly Accepts Benefits for Consideration***

A person commits an offense if he intentionally or knowingly solicits, accepts, or agrees to accept from another:

- Any benefit as consideration for his decision, opinion, recommendation, vote, or other exercise of discretion as a public servant,
- Any benefit as consideration for his decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding,
- Any benefit as consideration for a violation of a duty imposed by law on a public servant,
- Any benefit that is a political contribution if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise would not have been taken or withheld but for the benefit.

*Penal Code §36.02.*

### ***b. A Benefit is Anything Regarded as Monetary Gain or Advantage***

Benefit means anything reasonably regarded as pecuniary gain or pecuniary advantage, including a benefit to any other person in whose welfare the beneficiary has a direct and substantial interest. *Penal Code §36.01(3).*

### ***c. A Public Servant is Anyone Who Holds Public Office***

A public servant is a person elected, selected, appointed, employed, or otherwise designated as an officer, employee, or agent of government, or a candidate for nomination or election to public office. *Penal Code §1.07(a)(41).*

### ***d. Not a Defense to Prosecution That the Person Being Bribed Hasn't Assumed Office Yet***

It is not a defense to prosecution that a person whom the actor sought to influence was not qualified to act in the desired way because he had not yet assumed office or he lacked jurisdiction for any other reason. *Penal Code §36.02(b).*

### ***e. Not a Defense to Prosecution That the Benefit Wasn't Offered Until the Person Offering the Bribe Got What They Wanted or the Public Servant Left Office***

It is not a defense to prosecution that the benefit is not offered or conferred, or that the benefit is not solicited or accepted until after:

- The decision, opinion, recommendation, vote, or other exercise of discretion has occurred, or
- The public servant ceases to be a public servant.

*Penal Code §36.02(c).*

## Bribery

Bribery can be committed in two ways:

- It is a crime for a justice of the peace to *ask* someone else for a benefit, and
- It is a crime for a justice of the peace to *accept* a benefit from someone.



COMMON  
PITFALL

**f. Punishment**

An offense under this section is a felony of the second degree.

**3. Acceptance of Honorarium**

**a. It is an Offense for a Person to Accept an Honorarium in Consideration for Services the Person Wouldn't Be Requested to Provide but for His or Her Position as a Public Servant**

A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services the public servant would not have been requested to provide but for the public servant's official position or duties. *Penal Code §36.07(a)*.

Honorarium is payment for a service that someone receives for doing something which is not a normal part of their job. For example, making a speech

**b. Punishment**

An offense under this section is a Class A misdemeanor. *Penal Code §36.07(c)*.

**c. Acceptance of Lodging and Transportation Expenses in Connection with an Event Where the Person Lectures is Allowed**

This section does not prohibit a public servant:

- From accepting transportation and lodging expenses in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent those services are more than merely routine, or
- From accepting meals in connection with such an event.

*Penal Code §36.07(b)*.

**4. Gift to Public Servant by a Person Subject to His or Her Jurisdiction Prohibited**

**a. Offense**

A public servant who has judicial or administrative authority commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in, or likely to become interested in, any matter before the public servant. *Penal Code §36.08(e)*.

**b. Punishment**

An offense under this section is a Class A misdemeanor. *Penal Code §36.08(h)*.

What if a landlord who files a bunch of eviction cases in my court gives me a Christmas present?

A justice of the peace cannot accept a gift from a person who has an interest in, or is likely to have an interest in, a matter before that justice.



### ***c. An Unsolicited Gift May be Donated***

A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting may:

- Donate the benefit to a governmental entity that has the authority to accept the gift, or
- Donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

*Penal Code §36.08(i).*

### ***d. Fees and Benefits to Which a Justice Are Lawfully Entitled Are Allowed***

This section does not apply to:

- A fee prescribed by law to be received by a public servant,
- Any other benefit to which the public servant is lawfully entitled, or
- Any other benefit for which the public servant gives legitimate consideration in a capacity other than as a public servant.

*Penal Code §36.10(a)(1).*

It is not a crime to receive payment for performing marriage ceremonies, acting as local registrar for the Bureau of Vital Statistics, or acting as ex officio notary public.

### ***e. Gifts to Family and Friends Allowed if Done in a Personal Capacity***

This section does not apply to a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient. *Penal Code §36.10(a)(2).*

## **5. Tampering with Governmental Records Prohibited**

### ***a. Offense***

A person commits an offense if he:

- Knowingly makes a false entry in, or false alteration of, a governmental record,
- Makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record,
- Intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record,
- Possesses, sells, or offers to sell a governmental record or a blank governmental record from with intent that it be used unlawfully,
- Makes, presents, or uses a governmental record with knowledge of its falsity, or
- Possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.

*Penal Code §37.10(a).*

**So, friends and family can't give me gifts?**

Friends and family can give gifts to a person who happens to be a justice of the peace, if the gift is given in a personal and not a professional capacity.

**b. Punishment**

An offense under this section is a Class A misdemeanor, unless the actor’s intent is to defraud or harm another, in which event the offense is a state jail felony. *Penal Code §37.10(c)(1)*.

**6. Abuse of Official Capacity**

**a. Offense**

A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:

- Violates a law relating to the public servant’s office or employment, or
- Misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant’s custody or possession by virtue of the public servant’s office or employment.

*Penal Code §39.02(a)*.

**b. Punishment for Violating a Law Relating to the Public Servant’s Office or Employment**

An offense for violating a law relating to the public servant’s office or employment is a Class A misdemeanor. *Penal Code §39.02(b)*. The term “law relating to a public servant’s office or employment” means a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly imposes a duty on the public servant, or governs the conduct of the public servant. *Penal Code §39.01(1)*.

**c. Punishment for Misusing Government Property, Services, or Personnel**

An offense for misusing government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant’s custody or possession by virtue of the public servant’s office or employment is based on the value of the thing misused. *Penal Code §39.02(c)*.

For example:

- A Class C misdemeanor if the value of the use of the thing misused is less than \$100,
- A Class B misdemeanor if the value of the use of the thing misused is \$100 or more but less than \$750, and
- So on up through a first degree felony if the value of the use of the thing misused is \$300,000 or more.

For a list of all the possible punishments, see *Penal Code §39.02(c)(1)-(7)*.

The term “misuse” means to deal with property contrary to:

- An agreement under which the public servant holds the property,
- A contract of employment or oath of office of a public servant,

**Punishment for misusing government property, services, or personnel:**

Punishment is based on the value of the thing misused and can range anywhere from a Class C misdemeanor to a 1<sup>st</sup> Degree felony

- A law, including provisions of the General Appropriations Act specifically relating to government property that prescribes the manner of custody or disposition of the property, or
- A limited purpose for which the property is delivered or received.

*Penal Code §39.01(2).*

If separate transactions are conducted pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the value of the things misused may be added together in determining the classification of the offense. *Penal Code §39.02(e).*

***d. Travel Rewards, Discounts, and Coupons Are Not Things of Value***

A discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons are not things of value belonging to the government for purposes of this section. *Penal Code §39.02(d).*

***e. Concurrent Jurisdiction to Prosecute***

Offenses can be prosecuted by either the local county or district attorney, or the attorney general. The attorney general must first get consent of the local county or district attorney before prosecuting. *Penal Code §39.015.*

**7. Official Oppression**

***a. Offense***

A public servant acting under color of his office or employment commits an offense if he:

- Intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful,
- Intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful, or
- Intentionally subjects another to sexual harassment

*Penal Code §39.03(a).*

***i. When is a Public Servant Acting Under Color of His or Her Office or Employment?***

A public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity. *Penal Code §39.03(b).*

***ii. Definition of Sexual Harassment for Purposes of Official Oppression***

Sexual harassment means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly. *Penal Code §39.03(c).*

**Can I get frequent flyer miles for business related travel?**

Yes! A discount or award given for travel, rental car or hotel discounts, or food coupons are not considered things of value.

### ***b. Punishment***

An offense is a Class A misdemeanor, except that an offense is a third degree felony if the public servant acted with the intent to impair the accuracy of data reported to the Texas Education Agency. *Penal Code §39.03(d)*.

## **8. Misuse of Official Information**

### ***a. Offense for Use of Information the Justice Has Access to by Virtue of His or Her Position***

A public servant commits an offense if, in reliance on information to which the public servant has access by virtue of the person's office or employment and that has not been made public, the person;

- Acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information,
- Speculates or aids another to speculate on the basis of the information, or
- As a public servant coerces another into suppressing or failing to report that information to a law enforcement agency.

*Penal Code §39.06(a)*.

### ***b. Offense for Disclosing Information with Intent to Obtain a Benefit or Harm Another***

A public servant commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, he discloses or uses information for a nongovernmental purpose that he has access to by means of his office or employment, and has not been made public. *Penal Code §39.06(b)*.

### ***c. Offense for Making Information Public***

Information that has not been made public means any information to which the public does not generally have access and is prohibited from disclosure. *Penal Code §39.06(c)*.

### ***d. Punishment***

An offense is a third degree felony, except that an offense where a public servant coerces another into suppressing or failing to report that information to a law enforcement agency is a Class C misdemeanor. *Penal Code §39.06(e)-(f)*.

## **9. Restrictions on Blacklisting**

### ***a. Offense***

A person commits an offense if the person:

- Blacklists an employee,
- Causes an employee be blacklisted, or
- Conspires to prevent an employee discharged by a corporation, company, or individual from procuring employment.

*Labor Code §52.031(b)*.

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Blacklist means to place on a book or list, or publish the name of an employee who was discharged or who voluntarily left employment, intending to prevent the employee from engaging in or securing employment of any kind anywhere else. *Labor Code §52.031(a)*.

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***b. Punishment***

An offense is punishable by:

- A fine of not less than \$50 or more than \$250,
- Imprisonment in jail for not less than 30 days or more than 90 days, or
- Both fine and imprisonment.

*Labor Code §52.031(c)*.

**10. Violating Nepotism Laws is an Offense Involving Official Misconduct**

***a. Offense***

An individual commits an offense involving official misconduct if the individual violates the nepotism laws. *Government Code §573.084(a)*.

***b. Punishment***

An offense is a misdemeanor punishable by a fine not less than \$100 or more than \$1,000. *Government Code §573.084(b)*.

**11. Violation of Campaign Contribution Laws**

***a. A Candidate Can't Accept Cash Contributions of \$100 or More From One Person***

***i. Offense***

A candidate or officeholder may not knowingly accept from a contributor in a reporting period political contributions in cash that in the aggregate exceed \$100. *Election Code §253.003(b)*.

***ii. Punishment***

An offense is a Class A misdemeanor. *Election Code §253.003(d)*.

***b. Contributions in Certain Public Buildings Prohibited***

***i. A Person May Not Make a Political Contribution While in a Courthouse***

A person may not knowingly make or authorize a political contribution while in a courthouse to:

- A candidate or officeholder,
- A political committee, or
- A person acting on behalf of a candidate, officeholder, or political committee.

*Election Code §253.039(a)*

## **ii. A Candidate or Officeholder Cannot Accept Contributions While in a Courthouse**

A candidate, officeholder, or person acting on behalf of a candidate or officeholder may not knowingly accept a political contribution, and shall refuse a contribution received in a courthouse. *Election Code §253.039(b)*. This does not prohibit contributions made in a courthouse through the U.S. postal service or contract carrier. *Election Code §253.039(c)*.

## **iii. Definition of Courthouse for Restrictions on Campaign Contributions**

Courthouse means any building owned by the state, a county, a municipality, or an office leased to the state, a county, or a municipality in which a justice or judge sits to conduct court proceedings. *Election Code §253.039(h)*.

## **iv. Punishment**

An offense under this section is a Class A misdemeanor. *Election Code §253.039(d)*.

## **c. Campaign Contributions Shall Be Kept Separate**

### **i. Offense**

Each candidate or officeholder shall keep the person's campaign and officeholder contribution in one or more accounts that are separate from any other account maintained by the person. *Election Code §253.040(a)*.

### **ii. Punishment**

An offense under this section is a Class B misdemeanor. *Election Code §253.040(b)*.

## **12. Violation of Required Financial Reporting**

### **a. Offense Committed for Failing to File a Financial Statement**

A justice of the peace or candidate for justice of the peace commits an offense if he knowingly fails to file a financial statement. *Local Government Code §159.008(a)*.

### **b. Punishment**

An offense under this section is a Class B misdemeanor. *Local Government Code §159.008(b)*. It is a defense to prosecution that the justice or candidate did not receive copies of the financial statement form required to be mailed to the justice or candidate. *Local Government Code §159.008(c)*.

## **13. Failure to Furnish County Auditor with Report**

### **a. Offense**

A county official who is required to provide a report, statement, or other information to the county auditor and who intentionally refuses to comply with a reasonable request of the county auditor relating to the report, statement, or information, commits an offense. *Local Government Code §114.003*.

## ***b. Punishment***

An offense is a misdemeanor punishable by:

- A fine of not less than \$25 or more than \$200,
- Removal from office, or
- Both a fine and removal from office.

*Local Government Code §114.003.*

## **14. Solicitation or Acceptance of Referral Fees or Gifts by a Justice of the Peace**

### ***a. Offense***

A judge commits an offense if the judge solicits or accepts a gift or a referral fee in exchange for referring any kind of legal business to an attorney or law firm. *Government Code §33.051(a).*

### ***b. Affirmative Defense to Prosecution***

It is an affirmative defense to prosecution that:

- The judge solicited the gift or referral fee before taking the oath of office but accepted the gift or fee after taking the oath of office, or
- The judge solicited or accepted the gift or referral fee after taking the oath of office in exchange for referring to an attorney or law firm legal business that the judge was engaged in but was unable to complete before taking the oath of office.

*Government Code §33.051(b).*

### ***c. Punishment***

An offense under this section is a Class B misdemeanor. *Government Code §33.051(c).* If the State Commission on Judicial Conduct determines a judge engaged in this conduct, the Commission may issue a sanction or institute formal proceedings, regardless of whether the judge is being prosecuted or has been convicted of an offense. *Government Code §33.051(d).*

A judge who has information that a judge engaged in this conduct shall file a complaint with the Commission not later than 30 days after the judge obtained the information. A judge who fails to comply is subject to sanctions by the Commission. *Government Code §33.051(e).*

### ***d. When Acceptance of a Gift or Referral Fee is Not a Crime***

This section does not apply to a justice of the peace if that justice accepts a gift or referral fee in exchange for referring legal business that involves a matter over which the justice does not have subject matter jurisdiction. *Government Code §33.051(f).*

## **15. Collecting Debt for Another**

### ***a. Offense***

A justice commits an offense if the justice:

- Accepts for collection, or undertakes the collection of, a claim for a debt for another, unless the justice acts under a law that prescribes the duties of the justice, or

- Accepts compensation not prescribed by law for accepting for collection or undertaking the collection of a claim for debt for another.

*Government Code §27.006(a).*

***b. Punishment***

An offense under this section is a misdemeanor punishable by a fine not less than \$200 or more than \$500. *Government Code §27.006(b).* In addition to the fine, the justice may be removed from office. *Government Code §27.006(c).*

This section does not prohibit a justice who is authorized by law to act for others in the collection of debts from undertaking to collect a debt for another if the amount of the debt is beyond the jurisdiction of the justice court. *Government Code §27.006(d).*

**16. Ex Officio Notary Public Misrepresenting Himself or Herself**

***a. Offense***

A person commits an offense if the person is an ex officio notary public and the person:

- States or implies that the person is an attorney licensed to practice law in this state,
- Solicits or accepts compensation to prepare documents for or otherwise represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States, United States citizenship, or related matters,
- Solicits or accepts compensation to obtain relief of any kind in behalf of another from any officer, agency, or employee of this state or the United States, or
- Uses the phrase “notario” or “notario publico” to advertise the services of a notary public, whether by signs, pamphlets, stationary, or other written communication or by radio or television.

*Government Code §406.017(a).*

***b. Special Requirement for Notary Services Advertised in a Language Other Than English***

A notary public who advertises the services of a notary public in a language other than English, whether by signs, pamphlets, stationery, or other written communication or by radio or television, must post or otherwise include with the advertisement a notice.

***i. Requirements of the Notice***

The notice must:

- State that the notary public is not an attorney,
- Must be in English and in the language of the advertisement, and
- Be in letters of a conspicuous size.

***ii. Radio or Television Advertisement***

If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message.



### **iii. Required Disclaimer**

The notice must include the fees that a notary public may charge and the following statement: "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." *Government Code §406.017(b)*.

### **c. Exception to Prosecution**

It is an exception to prosecution that, at the time of the conduct charged, the person is licensed to practice law in this state and in good standing with the State Bar of Texas. *Government Code §406.017(c)*.

### **d. Punishment**

An offense is a Class A misdemeanor unless the defendant has been previously convicted under this section, then it is a felony of the third degree. *Government Code §406.017(d)*. Failure to comply with these restrictions is also a deceptive trade practice actionable under Chapter 17, Business & Commerce Code. *Government Code §406.017(f)*.

## **17. Failure to Return the Marriage License**

### **a. Offense**

The person who conducts a marriage ceremony shall:

- Record on the license the
  - Date the ceremony is performed,
  - County where the ceremony is performed, and
  - Name of the person who performed the ceremony,
- Sign the license, and
- Return the license to the county clerk who issued it not later than the 30th day after the date the ceremony is conducted.

*Family Code §2.206(a)*.

### **b. Punishment**

A person who fails to comply with this section commits an offense. An offense under this section is a misdemeanor punishable by a fine of not less than \$200 and not more than \$500. *Family Code §2.206(b)*.

## **18. Performing a Marriage Ceremony with an Expired Marriage License**

### **a. Offense**

A person who is to conduct a marriage ceremony shall determine whether the license has expired from the county clerk's endorsement on the license. *Family Code §2.207(a)*. A person who conducts a marriage ceremony after the marriage license has expired commits an offense. *Family Code §2.207(b)*.

### **b. Punishment**

An offense under this section is a misdemeanor punishable by a fine of not less than \$200 and not more than \$500. *Family Code §2.207(b)*.

## **19. Violation of Provisions Related to Keeping Receipt Books**

### ***a. Offense***

An officer commits an offense if the officer violates a provision related to the keeping of a receipt book or an audit.

### ***b. Punishment***

An offense is a Class C misdemeanor. An officer may also be removed from office on the petition of the county or district attorney. *Code of Criminal Procedure Art. 103.012.*

# CHAPTER 8: SANCTIONING BODIES AND THE COMPLAINT PROCESS

Depending on the type of violation, whether it's civil or criminal, and the law governing the violation, the complaint process, proceedings, and consequences will be different. Some violations can have criminal and civil consequences. Some violations can result in sanctions, reprimands, or even removal.

## A. Agencies Responsible for Discipline

### 1. State Commission on Judicial Conduct

The State Commission on Judicial Conduct is an agency of the judicial branch that administers judicial discipline to judges and justice of the peace who violate the law. *Government Code §33.002(a-1)*. The Commission's proceedings and rulings can occur in addition to any statutory penalties that justices of the peace face.

### 2. District Court Judges

Under the Texas Constitution and Chapter 87 of the Local Government Code, district court judges can remove justices of the peace for certain violations. [A discussion on that process begins on page 115.](#)

### 3. Justices of the Peace Who Are Attorneys Can Be Disciplined by the State Commission on Judicial Conduct and the State Bar of Texas

The State Bar of Texas administers discipline to attorneys who violate the law. A justice of the peace who is an attorney can receive discipline from both the State Commission on Judicial Conduct and The State Bar of Texas.

### 4. Secretary of State, Attorney General, or the District Attorney Handle Discipline for Non-judges and Non-attorneys

Discipline for non-judges and non-attorneys is handled by the Secretary of State, Attorney General, or the local district attorney.

## B. State Commission on Judicial Conduct

The State Commission on Judicial Conduct does not have the power or authority of a court. *Government Code §33.002(a-1)*.

### Agencies Responsible for Discipline

- State Commission on Judicial Conduct,
- State Bar of Texas,
- Secretary of State,
- Attorney General, and
- District Attorney

## 1. The Commission's Jurisdiction

The Commission exercises jurisdiction over judges and judicial officers in Texas including justices of the peace, magistrates, and retired or former justices who are available for assignments as visiting justices of the peace. *Government Code §33.002*.

## 2. Commission's Objective is to Preserve Integrity of Judges and Justices of the Peace

The Commission's objectives are to preserve the integrity of all judges in the state, to ensure public confidence in the judiciary, and to encourage judges to maintain high standards of both professional and personal conduct. *Government Code §33.002*.

## 3. Distribution of Materials to Judges and the Public

The Commission shall develop and distribute plain-language materials to judges and the public. *Government Code §33.007(a)*. The materials must include a description of:

- The Commission's responsibilities,
- The types of conduct that constitute judicial misconduct,
- The types of sanctions issued by the Commission, including orders of additional education, and
- The policies and procedures relating to complaint investigation and resolution.

*Government Code §33.007(b)*.

## 4. Public Statements Issued by the Commission

The Commission issues public statements regarding significant issues affecting judicial conduct. To see all statements issued since 2000, go to the State Commission on Judicial Conduct website at [www.scjc.state.tx.us/public-information/public-statements](http://www.scjc.state.tx.us/public-information/public-statements).

## 5. Investigations and Formal Proceedings

### *a. Preliminary Investigations*

The Commission may conduct a preliminary investigation of the circumstances surrounding an allegation or appearance of misconduct or disability of a judge to determine if the allegation or appearance is unfounded or frivolous. *Government Code §33.022(a)*.

### *i. Unfounded or Frivolous Allegations*

If, after conducting a preliminary investigation, the Commission determines an allegation or appearance of misconduct or disability is unfounded or frivolous, the Commission shall terminate the investigation. *Government Code §33.022(b)*.

### *ii. A Complainant May Request Reconsideration of a Dismissed Complaint*

A complainant may request reconsideration of a dismissed complaint if, not later than 30 days after the date of the communication informing the complainant of the dismissal, the

### How do I know what counts as official misconduct?

The Commission must provide a judge with materials that describe the type of conduct that constitutes judicial misconduct.

A justice can also read the Commission's Public Statements on their website to get clarification.

complainant provides additional evidence of misconduct committed by the judge. *Government Code §33.035(a)*. A complainant may request reconsideration of a dismissed complaint only once. *Government Code §33.035(f)*.

***b. Full Investigation Required if the Complaint Isn't Dismissed After a Preliminary Investigation***

If, after conducting a preliminary investigation, the Commission does not determine that an allegation or appearance of misconduct or disability is unfounded or frivolous, the Commission **shall**:

- Conduct a full investigation of the circumstances surrounding the allegation or appearance of misconduct or disability, and
- Notify the judge in writing of the commencement of the investigation and the nature of the allegation or appearance of misconduct or disability being investigated.

The Commission **may** also:

- Order the judge to appear informally or submit a written response to the allegation or appearance of misconduct or disability,
- Order the deposition of any person, or
- Request the complainant to appear informally before the Commission.

*Government Code §33.022(c)*.

***i. A Judge Must Be Notified of the Disposition of a Full Investigation***

The commission shall notify the judge in writing of the disposition of a full investigation. *Government Code §33.022(f)*.

***ii. Results of a Full Investigation***

The investigation could result in a sanction or censure, or it could include institution of formal proceedings.

***c. Formal Proceedings Following an Investigation***

***i. Written Notice When Formal Proceedings Instituted***

If formal proceedings are to be instituted after an investigation is completed, written notice of the institution of formal proceedings shall be served on the judge without delay. *Government Code §33.022(g)*.

The Judge will receive notice of the charges against him, the alleged facts on which the charges are based, and the specific standards contended to have been violated. *Government Code §33.022(h)*.

**Will I be notified of a complaint or investigation?**

- If a complaint is filed and the Commission determines it is unfounded, the justice might never be notified.
- If a complaint is filed and a full investigation is required, the Commission has to notify the justice of the investigation and nature of the allegation.

**ii. The Judge May File a Written Answer to the Charges**

The judge is entitled to file a written answer to the charges not later than the 15<sup>th</sup> day after the notice is served. *Government Code §33.022(h)*.

**iii. Due Process and Right to Discovery Apply at a Formal Proceeding**

A justice of the peace undergoing a formal proceeding has the right of discovery of evidence, and due process of law in the same manner that any person whose property rights are in jeopardy in an adjudicatory proceeding has. This includes the right to notice, counsel, hearing, confrontation of accusers, and all other incidents of due process. *Texas Constitution Art. 5 §1-a(11)*.

**iv. The Commission or a Special Master May Hold the Formal Hearing**

The Commission may hold the formal hearing itself or ask for a Special Master to be appointed who will report his findings to the Commission. *Texas Constitution Art. 5 §1-a(8)*.

**v. The Hearing May Be Open to the Public Upon the Judge’s Request**

At the judge’s request, a judge may elect to have any hearing open to the public. The right to an open hearing does not prevent the exclusion of witnesses in the courtroom during trial. *Government Code §33.022(j)*.

**vi. Jury Trial Not Allowed in Formal Proceedings**

A judge is not entitled to a jury trial in formal proceedings before the Commission or Special Master. *Government Code §33.022(k)*.

**vii. A Complainant’s Identity May Be Kept Confidential**

On the request of a complainant, the Commission may keep the complainant’s identity confidential. *Government Code §33.0321*.

**d. Review of Commission’s Decision**

**i. Judge Entitled to Review When the Judge Receives a Sanction or Censure**

A judge who receives a sanction or censure is entitled to a review of the Commission’s decision. A judge is not entitled to review of the Commission’s decision to institute formal proceedings. *Government Code §33.034(a)*.

**ii. Request for Appointment of a Special Court of Review**

Not later than the 30<sup>th</sup> day after the date the Commission issues its decision, the judge must file with the Chief Justice of the Supreme Court a written request for appointment of a special court of review. *Government Code §33.034(b)*.

**iii. Appointment of a Court of Review**

Not later than ten days after the request is received, a court of review will be selected. *Government Code §33.034(c)*. Within 15 days after appointment of the court of review, the Commission shall file a

**Can I contest the Commission’s decision?**

A justice of the peace who receives a sanction or censure is entitled to review of the decision.

A request for a special court of review must be done within 30 days of the decision being issued.

charging document that includes a copy of the censure or sanction issued and any additional charges to be considered by the court. The charging document is public upon its filing. *Government Code §33.034(d)*.

***iv. Review of a Formal Proceeding is by Review of the Record***

Review of a sanction or censure issued in a formal proceeding is a review of the record of the proceedings that resulted in the sanction or censure, and is based on the law and facts presented in the proceedings and any additional evidence the court may permit. *Government Code §33.034(e)*.

***v. Review of an Informal Proceeding is by Trial De Novo***

Review of a sanction issued in an informal proceeding is by trial de novo as that term is used in the appeal of cases from the justice to county court. *Government Code §33.034(e)*. The procedure for review of a sanction issued in an informal proceeding is governed by the rules that apply to the trial of civil actions. *Government Code §33.034(f)*. A judge is not entitled to a trial by jury in a review of a sanction issued in an informal proceeding. *Government Code §33.034(g)*.

***vi. Hearings***

A hearing shall be held within 30 days of the filing of the charging document. *Government Code §33.034(h)*. Any hearings of the court shall be public and held at the location determined by the court. *Government Code §33.034(e-1)*.

***vii. Continuances***

The court may grant one or more continuances not to exceed a total of 60 days. *Government Code §33.034(h)*.

***viii. Disposition Decisions***

The court shall issue a decision as to the proper disposition of appeal within 60 days of the filing of the charging instrument. *Government Code §33.034(h)*. The reviewing court's decision is not appealable. *Government Code §33.034(i)*.

***e. Review Tribunal Required to Review Record if Removal is Recommended***

If removal of a judge is recommended, the Commission shall submit the record to a review tribunal. *Texas Constitution Art. 5 §1-a(9)*. Within 90 days, the review tribunal shall order public censure, retirement, removal, or dismiss the proceedings. *Texas Constitution Art. 5 §1-a(9)*.

***i. Review Tribunal's Decision is Appealable***

A judge may appeal a decision of the review tribunal to the Supreme Court under the substantial evidence rule. *Texas Constitution Art. 5 §1-a(9)*.

***ii. Justice Prohibited from Holding Office and Receiving Retirement Benefits if Removed***

Upon an order of removal, the office shall become vacant and the review tribunal may prohibit the judge from holding judicial office in the future. The judge is not eligible for judicial retirement benefits. *Texas Constitution Art. 5 §1-a(9)*.

## ***f. Complaint Process Flowchart***

A flowchart depicting the complaint process for a complaint filed against a judge can be found on the TJCTC website at <http://www.tjctc.org/tjctc-resources/publications.html#flowcharts>.

## **6. Judicial Misconduct Information**

The Commission shall routinely provide information relating to judicial misconduct resulting in sanctions or orders of additional education to entities that provide education to judges. *Government Code §33.008*.

## **7. Physical or Mental Incapacity of a Judge**

In any investigation or proceeding that involves the physical or mental capacity of a judge, the Commission may order the judge to submit to a physical or mental examination. *Government Code §33.023(a)*. If a judge refuses to submit to an examination, the Commission may petition a district court for an order compelling the judge to submit. *Government Code §33.023(d)*.

## **8. Confidentiality of Papers, Records, and Proceedings**

### ***a. Confidentiality During Informal Proceedings***

Papers filed with, and proceedings before, the Commission are confidential prior to the filing of formal charges. *Government Code §33.032(a)*.

### ***b. Formal Hearings Are Public***

The formal hearing and any evidence introduced during the formal hearing shall be public. *Government Code §33.032(b)*.

### ***c. Informal Records Become Public if Punishment is Assessed***

On issuance of a public admonition, warning, reprimand, or public requirement that a judge obtain additional training or education by the Commission, the record of the informal appearance shall become public. *Government Code §33.032(c)*.

### ***d. Disciplinary Records Are Admissible at Subsequent Proceedings***

The disciplinary record of a judge, including any private sanctions, is admissible in a subsequent proceeding before the:

- Commission,
- A Special Master,
- A special court of review, or
- A review tribunal.

*Government Code §33.032(d)*.

## **Are complaints, hearings, and findings confidential?**

Papers and proceedings of an informal investigation are confidential.

Formal hearings and the evidence admitted are public.

If a public punishment is issued, then informal papers and proceedings become public.



***e. All Records and Proceedings Public if Justice is Suspended Upon Indictment***

If the Commission issues an order suspending a judge who has been indicted for a criminal offense, all records and proceedings related to the suspension shall be public. *Government Code §33.032(g)*.

***f. Voluntary Resignation in Lieu of Disciplinary Action is Public***

A voluntary agreement to resign from judicial office in lieu of disciplinary action shall be public. *Government Code §33.032(h)*.

***g. Certain Disclosure of Information***

To protect the public interest, the Commission may disclose information relating to an investigation or proceeding to:

- A law enforcement agency,
- A public official who is authorized or required by law to appoint a person to serve as a judge, the supreme court, or
- An entity that provides commission-ordered education to judges.

*Government Code §33.036(a)*.

Information may be disclosed only to the extent necessary for the recipient of the information to perform an additional duty or function. *Government Code §33.036(b)*.

***h. Access to Criminal History Record Information***

The Commission is entitled to obtain from the Department of Public Safety, criminal history record information maintained by the Department that relates to a person who is:

- A judge who is the subject of an investigation or proceeding under Government Code Chapter 33, or
- The complainant or a witness in an investigation.

*Government Code §411.140(a)*.

***i. Criminal History Information is Confidential***

Information received by the Commission is confidential and may be disseminated only in an investigation or proceeding conducted by the Commission, or with the consent of the person who is the subject of the criminal history record information. *Government Code §411.140(b)*.

***ii. Criminal History Information Shall Be Destroyed After a Final Determination is Made***

The Commission shall destroy criminal history record information promptly after a final determination is made in the matter for which the information was obtained. *Government Code §411.140(c)*.

**9. Punishment by the State Commission on Judicial Conduct**

When the Commission determines punishment of a judge is necessary, the Commission can order sanctions, censure, suspension, removal, or retirement.

The entire procedural rules for the removal or retirement of judges can be found on the State Commission on Judicial Conduct [here](#).

### **a. Sanctions**

Sanctions are:

- Remedial in nature,
  - Issued prior to the institution of formal proceedings to:
  - Deter similar misconduct by judges in the future,
  - Promote proper administration of justice,
  - Reassure the public that the judicial system neither permits nor condones misconduct, and
- Can include:
  - Publicly or privately issued admonitions,
  - Publicly or privately issued warnings,
  - Publicly or privately issued reprimands,
  - Publicly or privately issued requirement that a person obtain additional training and education.

*Government Code §33.001(a)(10); Procedural Rules for Removal Rule 1(e).*

### **b. Censure**

A censure is an order that is tantamount to denunciation of the offending conduct. It is more severe than the remedial sanctions issued prior to a formal hearing. *Procedural Rules for Removal Rule 1(f).*

### **c. Suspension**

A judge may be suspended, with or without pay, by the Commission immediately upon:

- Being indicted by a state or federal grand jury for a felony offense, or
- Being charged with a misdemeanor involving official misconduct.

*Procedural Rules for Removal Rule 15(a).*

A misdemeanor involving official misconduct includes a misdemeanor:

- Involving an act relating to a judicial office, or
- Involving an act involving moral turpitude.

*Government Code §33.01(d).*

A suspended judge has the right to a post-suspension hearing to demonstrate that his or her continued service would not jeopardize the interests of parties involved in court proceedings over which the judge would preside, nor impair public confidence in the judiciary. *Procedural Rules for Removal Rule 15(a).* A written request for a post-suspension hearing must be filed within 30 days of the justice receiving the order of suspension. *Procedural Rules for Removal Rule 15(a).*

If a judge who is convicted of a felony or a misdemeanor involving official misconduct appeals the conviction, the Commission shall suspend the judge from office without pay pending final disposition of the appeal. *Government Code §33.037 Gov. Code.*

#### ***d. Removal or Retirement***

Based upon the severity of the judge's conduct, a judge can be removed from office by the Commission. A judge may choose to retire from his or her judicial position in lieu of being removed by the Commission.

### **C. District Court Judges**

Under the Texas Constitution and Chapter 87 of the Local Government Code, district court judges can remove justices of the peace for certain violations.

#### **1. Petition for Removal of a Justice of the Peace**

A proceeding for the removal of a justice of the peace is begun by filing a written petition for removal in a district court of the county in which the justice resides. *Local Government Code §87.015(a)*.

##### ***a. Who Can File a Petition for Removal?***

Any resident who has lived for at least six months in the county in which the petition is to be filed, and who is not currently under indictment in the county may file the petition. At least one of the parties who files the petition must swear to it at or before the filing. *Local Government Code §87.015(b)*.

##### ***b. Requirements of the Petition***

The petition must be addressed to the district judge of the court in which it is filed. The petition must set forth the grounds alleged for removal of the justice, and must cite the time and place of the occurrence of each act alleged as a ground for removal with as much certainty as the case permits. *Local Government Code §87.015(c)*.

#### **2. Citation Must Be Applied for and Served On the Justice of the Peace**

After the petition for removal is filed, the person filing shall apply to the district judge, in writing, for an order requiring a citation and a certified copy of the petition to be served on the justice of the peace. *Local Government Code §87.016(a)*.

##### ***a. Petition Dismissed if the Judge Refuses to Issue the Order for Citation***

If the judge refuses to issue the order for citation, the petition shall be dismissed at the cost of the person filing the petition. *Local Government Code §87.016(c)*.

##### ***b. The Decision Not to Issue the Order for Citation Cannot Be Appealed***

The person filing may not take an appeal or writ of error from the judge's decision not to issue the order for citation. *Local Government Code §87.016(c)*.

#### **Petition for removal:**

- Filed in the district court in the county where the justice lives,
- Can be filed by any county resident who has lived in the county for at least 6 months,
- Must state each alleged ground for removal with as much detail as possible.



KEY  
POINT

***c. Person Filing Must Post Security if the Order is Signed***

If the judge grants the order for citation, the judge shall require the person filing to post security. *Local Government Code §87.016(c)*.

***d. The Citation Shall Order the Justice to Appear and Answer the Petition***

The citation shall order the justice of the peace to appear and answer the petition on a date fixed by the judge. The date to appear must be at least six days after the citation is served. *Local Government Code §87.016(d)*.

**3. Suspension of the Justice Pending Trial**

After the issuance of the order requiring citation of the justice of the peace, the district judge may temporarily suspend the justice and appoint another person to perform the duties of the office. *Local Government Code §87.017(a)*.

***a. An Appointed Person Must Post a Bond Before the Justice Will Be Suspended***

The judge may not suspend the justice until the person appointed to serve executes a bond:

- With at least two sureties,
- In an amount fixed by the judge, and
- Conditioned as required by the judge.

*Local Government Code §87.017(b)*.

***b. Bond Used to Pay Damages and Costs if Grounds for Removal Are Found to be Insufficient or Untrue***

The bond shall be used to pay damages and costs to the suspended justice of the peace if grounds for removal are found to be insufficient or untrue at trial. In an action to recover on the bond it is necessary to allege and prove that the temporary appointee actively aided and instigated the filing and prosecution of the removal action. The suspended officer must also serve written notice on the temporary appointee and the appointee's bondsman, within 90 days after the date the bond is executed, stating that the officer intends to hold them liable on the bond and stating the grounds for that liability. *Local Government Code §87.017(b)*

***c. A Justice Will Be Compensated for the Time out of Office if Removal is Not Ordered***

If the final judgment establishes the justice's right to the office, the county shall pay him or her from the general fund of the county in an amount equal to the compensation received by the temporary appointee. *Local Government Code §87.017(c)*.

**4. Justices of the Peace can only Be Removed by Jury Trial**

Officers may be removed only following a trial by jury. *Local Government Code §87.018(a); Texas Constitution Art. 5 §24*. The only issue the jury will decide is whether the grounds for removal alleged in the petition are true. *Local Government Code §87.018(c)*.

***a. State is Represented by the County Attorney***

The county attorney shall represent the state in a proceeding for the removal of a justice of the peace. *Local Government Code §87.018(d).*

**5. Appeal of the Final Judgment is to the Court of Appeals**

Either party may appeal the final judgment to the court of appeals in the manner provided for other civil cases. *Local Government Code §87.019(a).*

***a. Appeal Bond Not Required if the Justice Was Not Suspended***

If the justice of the peace has not been suspended from office, the justice is not required to post an appeal bond, but may be required to post a bond for costs. *Local Government Code §87.019(a).*

***b. Appeal of a Removal Action Takes Precedence***

An appeal of a removal action takes precedence over the ordinary business of the court. *Local Government Code §87.019(b).*

***c. Mandate Issued Within 5 Days if the Trial Court Judgment is Not Set Aside or Suspended***

If the trial court judgment is not set aside or suspended, the court of appeals shall issue its mandate within 5 days after the date the court renders its judgment. *Local Government Code §87.019(b).*

**D. Actions That Can Result in Removal from Office**

**1. Actions That Can Result in Removal from Office by the State Commission on Judicial Conduct**



KEY  
POINT

A justice of the peace can be removed from office by the State Commission on Judicial Conduct for:

- Willful or persistent violation of rules promulgated by the Supreme Court of Texas,
- Incompetence in performing the duties of the office,
- Willful violation of the Code of Judicial Conduct,
- Willful or persistent conduct that is clearly inconsistent with the proper performance of a justice of the peace’s duties, or that casts public discredit upon the judiciary or administration of justice.

*Texas Constitution Art. 5 §1-a.*

***a. Willful Conduct Clearly Inconsistent with the Proper Performance of Duties***

Willful or persistent conduct that is clearly inconsistent with the proper performance of a justice of the peace’s duties, or that casts public discredit upon the judiciary or administration of justice includes:

- Willful, persistent, and unjustifiable failure to timely execute the business of the court, considering the quantity and complexity of the business,
- Willful violation of a provision of the Texas penal statutes or the Code of judicial conduct,
- Persistent or willful violation of the rules promulgated by the Supreme Court,

- Incompetence in the performance of the duties of the office,
- Failure to cooperate with the Commission, or
- Violation of any provision of a voluntary agreement to resign from judicial office in lieu of disciplinary action by the Commission.

*Government Code §33.001(b).*

### ***b. Discrimination in Performing Wedding Ceremonies***

On a finding by the Commission that a justice of the peace has intentionally discriminated on the basis of race, religion, or national origin against someone wanting to be married who is otherwise competent to be married, the Commission may recommend to the Supreme Court that the justice be removed from office. *Family Code §2.205.*

## **2. Actions That Can Result in Removal from Office by a District Court Judge**

A justice of the peace can be removed by the judges of the district courts for:

- Incompetency,
- Official misconduct,
- Intoxication on or off duty by drinking an alcoholic beverage,
- Failure to give bond, and
- Other causes defined by law.

*Texas Constitution Art. 5 §24; Local Government Code §87.013; Local Government Code §87.014.*

### ***a. Incompetency***

Incompetency is defined as:

- Gross ignorance of official duties,
- Gross carelessness in the discharge of those duties,
- Unfitness or inability to promptly and properly discharge official duties because of a serious physical or mental defect that did not exist at the time of the justice's election,
- Failure of the justice of the peace to successfully complete, within one year after the date the justice is first elected, an 80-hour course in the performance of the justice's duties, or
- Failure of the justice of the peace to successfully complete each following year, a 20-hour course in the performance of the justice's duties, including not less than 10 hours of instruction regarding substantive, procedural, and evidentiary law in civil matters.

*Local Government Code §87.011(2)(A)-(C); Government Code §27.005(a)(1)-(2).*

### ***b. Education Courses for Justices of the Peace***

Education courses for justices of the peace may be completed in an accredited state-supported school of higher education. Attorney justices of the peace are required to comply with these same training standards. The educational requirements of justices of the peace are promulgated under the rule making authority of the Texas Court of Criminal Appeals. *Government Code §56.005(b).*



KEY  
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### ***i. Non-Attorney Justice of the Peace Education Requirements***

Non-attorney justices of the peace must come to the Texas Justice Court Training Center for 80 hours of education when they are first elected as well as for 20 hours of education their second year. In their third and subsequent years, non-attorney justices of the peace must get 20 hours of education, 10 of which must be civil. Justices must come to the Training Center for the 10 civil hours, but may go to the Training Center or elsewhere for the other 10 hours.

### ***ii. Attorney Justice of the Peace Education Requirements***

Attorney justices of the peace must come to the Texas Justice Court Training Center for 80 hours of education when they are first elected. After that, an attorney justice of the peace can use any type of CLE credit to satisfy the yearly 20 hour requirements.

### ***c. Official Misconduct***

Official misconduct is defined as intentional and unlawful behavior relating to the official duties of a justice of the peace entrusted with the administration of justice or the execution of law. The term includes an intentional or corrupt failure, refusal, or neglect of a justice of the peace to perform a duty imposed on the justice by law. *Local Government Code §87.011(3)*.

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Official misconduct is not to be confused with the criminal offense of Abuse of Official Capacity. *Talamantez v. State*.

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### ***d. No Removal for Intoxication if it was at the Direction of a Doctor***

Intoxication is not a ground for removal if it appears at trial that the intoxication was caused by drinking an alcoholic beverage on the direction and prescription of a licensed physician practicing in the state. *Local Government Code §87.013(b)*.

### ***e. Removal for Failure to Give Bond***

A county officer required by law to give an official bond may be removed if the officer:

- Fails to execute the bond within the time prescribed by law, or
- Does not give a new bond, or an additional bond or security, if required by law to do so.

*Government Code §87.014*.

### ***f. Removal for Violating Laws Related to Keeping Receipt Books or Audits***

A justice of the peace who violates a provision related to the keeping of a receipt book or an audit may be removed from office on the petition of the county or district attorney. *Code of Criminal Procedure §103.012*.

## **3. Actions That Can Result in Automatic Removal from Office**

### ***a. Removal Upon Conviction or Granting of Deferred Adjudication***

A justice of the peace is automatically removed from office if the justice is convicted of or is granted deferred adjudication for

- A felony, or
- A misdemeanor involving official misconduct.

*Government Code §33.038.*

***i. Removal Order Included in Judgment***

The court rendering judgment shall include an order removing the justice of the peace in the judgment. *Local Government Code §87.031.*

***ii. Appeal Supersedes Removal Unless Removal is in the Public's Interest***

If the justice of the peace appeals the judgment, the appeal supersedes the order of removal unless the court that renders the judgment finds it is in the public interest to suspend the justice pending the appeal. *Local Government Code §87.032.*

***b. Removal from Office for Violating Nepotism Laws***

An individual who violates the laws regarding nepotism shall be removed from the individual's position. Removal must be made in accordance with any removal provisions in the Constitution if applicable. If the Constitution does not govern the removal, the removal is governed by Section 573.081, Government Code. *Government Code §573.081(a).*

Removal from a position shall be made immediately and summarily if a criminal conviction against the appointee for a violation of the nepotism laws becomes final. *Government Code §573.081(b).*



## CHAPTER 9: PUBLIC ACCESS TO RECORDS

Access to information collected, assembled, or maintained by or for the judiciary is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules. *Government Code §552.0035*.

Under the philosophy that government is the servant and not the master of the people, each person is entitled, unless expressly prohibited by law, to complete information about the affairs of government and the official acts of public officials and employees. *Government Code §552.001(a)*.

Access to judicial records is governed by the Rules of Judicial Administration and discussed in Section A below. Access to court case records is governed by common law or statute and discussed in Section B below.

### A. Rules of Judicial Administration Rule 12

#### 1. Rule 12 is the Main Authority on Public Access to Judicial Records

Rule 12 of the Rules of Judicial Administration governs public access to judicial records held by any court and is the main authority on the subject. **A complete set of the Rules of Judicial Administration can be found [here](#).**

#### 2. Purpose of the Rule

The purpose of the rule is to provide public access to information in the judiciary that is consistent with the mandates of the Texas Constitution that the public interests are best served by open courts and by an independent judiciary. The rule should be liberally construed to achieve its purpose. *Rules of Judicial Administration Rule 12.1*.

#### 3. Definitions

##### a. Judicial Record

##### i. What is a Judicial Record?

For purposes of this rule, judicial record means a record made by or for a court or judicial agency in its regular course of business, but not pertaining to its adjudicative function, regardless of whether that function relates to a specific case. *Rules of Judicial Administration Rule 12.2(d)*.

Payments made to court appointed attorneys and ad litem appointed by the court are examples of judicial records.

**Rule 12 Decisions 00-001 (2000) and 06-001 (2006) are included in Chapter 10, beginning on page 134, to help demonstrate what is and isn't a judicial record.**

### What counts as a judicial record?

A document made in the regular course of business that does not pertain to the court's adjudicative function.

It is information made in connection with the transaction of official business.

## **ii. What is Not a Judicial Record?**

A record of any nature created, produced, or filed in connection with any matter that is or has been before a court is a court case record, not a judicial record. *Rules of Judicial Administration Rule 12.2(d)*. These documents may be accessible to the public under other rules, but they are not judicial records. Motions filed in a case are an example of court case records. **Court case records are discussed beginning on page 128.**

## **iii. Form of the Record**

A record is a document, paper, letter, map, book, tape, photograph, film, recording, or other material, regardless of electronic or physical form, characteristics, or means of transmission. *Rules of Judicial Administration Rule 12.2(d)*.

## **b. Records Custodian**

Records custodian means the person with custody of a judicial record as determined as follows:

- The judicial records of a court with only one judge, such as any trial court, are in the custody of that judge.
- Judicial records pertaining to the joint administration of a number of those courts, such as the district courts in a particular county or region, are in the custody of the judge who presides over the joint administration, such as the local or regional administrative judge.

*Rules of Judicial Administration Rule 12.2(e)*.

## **4. Applicability of Rule 12**

Rule 12 applies to judicial records as defined above. This rule does not apply to:

- Records or information to which access is controlled by:
  - A state or federal court rule, including
    - A rule of civil or criminal procedure, including Rule 76a, Texas Rules of Civil Procedure,
    - A rule of appellate procedure,
    - A rule of evidence, or
    - A rule of administration,
  - A state or federal court order not issued merely to thwart the purpose of this rule,
  - The Code of Judicial Conduct,
  - Chapter 552 Government Code or another statute or provision of law,
- Records or information to which Chapter 552 Government Code is made inapplicable by statute, rule, or other provision of law, other than Section 552.003(1)(B),
- Records or information relating to an arrest or search warrant or a supporting affidavit, access to which is controlled by:
  - A state or federal court rule, including a rule of civil or criminal procedure, appellate procedure, or evidence, or
  - Common law, court order, judicial decision, or another provision of law, or
- Elected officials other than judges.

*Rules of Judicial Administration Rule 12.3.*

## 5. Access to Judicial Records

### *a. Judicial Records Open to the Public*

Judicial records other than those covered by Rules 12.3 and 12.5 are open to the general public for inspection and copying during regular business hours. *Rules of Judicial Administration Rule 12.4(a)*.

### *b. Courts Don't Have to Go Out of Their Way to Create, Retain, or Provide Judicial Records*

This rule does not require a court, judicial agency, or records custodian to:

- Create a record other than to print information stored in a computer,
- Retain a judicial record for a specific period of time,
- All the inspection of or provide a copy of information in a book or publication commercially available to the public, or
- Respond to or comply with a request for a judicial record from or on behalf of an individual who is imprisoned or confined in a correctional facility or in any other such facility in any state, federal, or foreign jurisdiction.

### *c. Records Can Be Made Public Voluntarily*

A records custodian may voluntarily make part or all of the information in a judicial record available to the public, unless the disclosure is expressly prohibited by law, the records are exempt from disclosure, or the information is confidential. Information voluntarily disclosed must be made available to any person who requests it. *Rules of Judicial Administration Rule 12.4(b)*.

## 6. Exemptions from Disclosure

The following records are exempt from disclosure and should **NOT** be disclosed:

- **Judicial work product and drafts** – any record that relates to a judicial officer's adjudicative decision-making process prepared by that judicial officer, by another judicial officer, or by court staff, an intern, or any other person acting on behalf of or at the direction of the judicial officer.
- **Security plans** – any record, including a security plan or code, the release of which would jeopardize the security of an individual against physical injury or jeopardize information or property against theft, tampering, improper use illegal disclosure, trespass, unauthorized access, or physical injury.
- **Personnel information** – any personnel record that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy.
- **Home address and family information** – any record reflecting any person's home address, home or personal telephone number, social security number, or family members.
- **Applicants for employment or volunteer service** – any records relating to an applicant for employment or volunteer services.
- **Internal deliberations on court or judicial administration matters** – any record relating to internal deliberations of a court or judicial agency, among judicial officers or members of a judicial agency, on matters of court or judicial administration.
- **Court law library information** – any record in a law library that links a patron's name with the materials requested or borrowed by that patron.

- **Judicial calendar information** – any record that reflects a judicial officer’s appointments or engagements that are in the future or that constitute an invasion of personal privacy.
- **Information confidential under other law** – any record that is confidential or exempt from disclosure under a state or federal constitutional provision, statute, or common law, including information that relates to A complaint alleging misconduct against a judicial officer is the complaint is exempt from disclosure under Chapter 33 Government Code or other law; A complaint alleging misconduct against a person who is licensed or regulated by the courts, if the information is confidential under applicable law; or A trade secret or commercial or financial information made privileged or confidential by statute or judicial decision.
- **Litigation or settlement negotiations** – any judicial record relating to civil or criminal litigation or settlement negotiations in which a court or judicial agency is or may be a party; or in which a judicial officer or member of a judicial agency is or may be a party as a consequence of the person’s office or employment.
- **Investigations of character or conduct** – any record relating to an investigation of any person’s character or conduct unless the record is requested by the person being investigated; and release of the record, in the judgment of the records custodian, would not impair the investigations.
- **Examinations** – any record relating to an examination administered to any person, unless requested by the person after the examination is concluded.

*Rules of Judicial Administration Rule 12.5(a)-(l).*

## **7. Procedures for Obtaining Access to Judicial Records**

### ***a. Request Must Be in Writing and Specifically Identify the Record***

A request to inspect or copy a judicial record must be in writing and must include sufficient information to reasonably identify the record requested. The request must be sent to the records custodian and not to a court clerk or other agent for the records custodian. A requestor need not have detailed knowledge of the records custodian's filing system or procedures in order to obtain the information. *Rules of Judicial Administration Rule 12.6(a).*

### ***b. Inspection Must Be Done Within 14 Days of the Request***

Time for inspection and delivery of copies is as soon as practicable, but not more than 14 days after receipt of a request to inspect or copy a judicial record. If the record is available, the records custodian must either:

- Allow the requestor to inspect the record and provide a copy if one is requested, or
- Send written notice to the requestor stating that the record cannot be produced or a copy provided within the 14 days, and setting a reasonable date and time when the document will be produced or a copy provided.

*Rules of Judicial Administration Rule 12.6(b).*

### ***c. Place for Inspection***

A records custodian must produce a requested judicial record at a convenient, public area. *Rules of Judicial Administration Rule 12.6(c).*

#### ***d. Portions of a Record Not Subject to Disclosure Must Be Redacted***

If part of a requested record is subject to disclosure under this rule and part is not, the records custodian must redact the portion of the record that is not subject to disclosure, permit the remainder of the record to be inspected, and provide a copy if requested. *Rules of Judicial Administration Rule 12.6(d)*.

#### ***e. Records Can Be Copied and Mailed***

The records custodian may deliver the record to a court clerk for copying. The records custodian may also mail the copy to a requestor who has prepaid the postage. *Rules of Judicial Administration Rule 12.6(e)*.

#### ***f. If a Recipient of a Record is not the Custodian, That Person Must Find Out Who Is***

A judicial officer or a presiding officer of a judicial agency who receives a request for a judicial record not in his or her custody as defined by this rule must promptly attempt to figure out who the custodian of the record is. If the recipient of the request can figure out who the custodian of the requested record is, the recipient must promptly refer the request to that person and notify the requestor in writing of the referral. The time for response does not begin to run until the referral is actually received by the records custodian.

If the recipient cannot figure out who the custodian of the requested record is, the recipient must promptly notify the requestor in writing that the recipient is not the custodian of the record and cannot figure out who the custodian of the record is. *Rules of Judicial Administration Rule 12.6(f)*.

#### ***g. A Person Requesting a Record Cannot Be Asked the Purpose of Their Request***

A person requesting a judicial record may not be asked to disclose the purpose of the request as a condition of obtaining the judicial record. A records custodian may make inquiry to establish the proper identification of the requestor or to clarify the nature or scope of a request. *Rules of Judicial Administration Rule 12.6(g)*.

#### ***h. Uniform Treatment of Requests***

A records custodian must treat all requests for information the same, without regard to the position or occupation of the requestor or the person on whose behalf a request is made, including whether they are a member of the media. *Rules of Judicial Administration Rule 12.6(h)*.

### **8. Costs for Copies of Judicial Records**

#### ***a. Costs***

The cost for a copy of a judicial record is either:

- The cost allowed by statute as discussed on [page 64](#), or
- If no statute prescribes the cost, the cost the Office of the Attorney General prescribes by rule in the Texas Administrative Code.

*Rules of Judicial Administration Rule 12.7(a)*.

### ***b. Waiver or Reduction of Costs***

A records custodian may reduce or waive the charge for a copy of a judicial record if:

- Doing so is in the public interest because providing the copy of the record primarily benefits the general public, or
- The cost of processing collection of a charge will exceed the amount of the charge.

*Rules of Judicial Administration Rule 12.7(b).*

### ***c. Appeal of Cost Assessment***

A person who believes that a charge for a copy of a judicial record is excessive may appeal the overcharge in the manner prescribed by Rule 12.9 for the appeal of the denial of access to a judicial record. *Rules of Judicial Administration Rule 12.7(c).*

### ***d. Records Custodian Not Personally Responsible for Cost***

A records custodian is not required to incur personal expense in furnishing a copy of a judicial record. *Rules of Judicial Administration Rule 12.7(d).*

## **9. Denial of Access to a Judicial Record**

### ***a. When a Request May Be Denied***

A records custodian may deny a request for a judicial record only if the records custodian:

- Reasonably determines that the requested judicial record is exempt from required disclosure under this rule, or
- Makes specific, non-conclusory findings that compliance with the request would substantially and unreasonably impede the routine operation of the court or judicial agency.

*Rules of Judicial Administration Rule 12.8(a).*

### ***b. Denial of Access to a Record Must Be Done Within 14 Days***

A records custodian who denies access to a judicial record must notify the person requesting the record of the denial within a reasonable time, not to exceed 14 days, after receipt of the request, or before the deadline for responding to the request. *Rules of Judicial Administration Rule 12.8(b).*

### ***c. Contents of a Denial Notice***

A notice of denial must be in writing and must:

- State the reason for the denial,
- Inform the person of the right of appeal, and
- Include the name and address of the Administrative Director of the Office of Court Administration.

*Rules of Judicial Administration Rule 12.8(c).*

## **10. Petition for Review of Denial of Access to Judicial Records**

### ***a. Appeal***

A person who is denied access to a judicial record may appeal the denial by filing a petition for review with the Administrative Director of the Office of Court Administration. *Rules of Judicial Administration Rule 12.9(a)*.

### ***b. Contents of Petition for Review***

The petition for review:

- Must include a copy of the request to the record custodian and the records custodian's notice of denial,
- May include any supporting facts, arguments, and authorities that the petitioner believes to be relevant, and
- May contain a request for expedited review, the grounds for which must be stated.

*Rules of Judicial Administration Rule 12.9(b)*.

### ***c. Time for Filing***

The petition must be filed not later than 30 days after the date that the petitioner receives notice of a denial of access to the judicial record. *Rules of Judicial Administration Rule 12.9(c)*.

### ***d. Notification to Records Custodian and Presiding Judge***

Upon receipt of the petition for review, the Administrative Director must promptly notify the records custodian who denied access to the judicial record and the presiding judge of each administrative judicial region of the filing of the petition. *Rules of Judicial Administration Rule 12.9(d)*.

### ***e. Records Custodian Can Respond to the Petition for Review***

A records custodian who denies access to a judicial record and against whom relief is sought may, within 14 days of receipt of notice from the Administrative Director, submit a written response to the petition for review and include supporting facts and authorities in the response.

The records custodian must mail a copy of the response to the petitioner. The records custodian may also submit for in camera inspection any record, or a sample of records, to which access has been denied. *Rules of Judicial Administration Rule 12.9(e)*.

### ***f. Formation of Special Committee***

Upon receiving notice of the petition for review, the presiding judges must refer the petition to a special committee. *Rules of Judicial Administration Rule 12.9(f)*.

### ***g. Decision***

The special committee's determination must be supported by a written decision that must:

- Issue within 60 days of the date that the Administrative Director received the petition for review,

- Either grant the petition in whole or in part or sustain the denial of access to the requested judicial record,
- State the reasons for the decision, including appropriate citations to this rule, and
- Identify the record or portions of the record to which access is ordered or denied, but only if the description does not disclose confidential information.

*Rules of Judicial Administration Rule 12.9(j).*

#### ***h. Notice of Decision***

The special committee must send the decision to the Administrative Director. On receipt of the decision from the special committee, the Administrative Director must:

- Immediately notify the petitioner and the records custodian of the decision and include a copy of the decision with the notice, and
- Maintain a copy of the special committee's decision in the Administrative Director's office for public inspection.

*Rules of Judicial Administration Rule 12.9(k).*

#### ***i. Publication of Decision***

The Administrative Director must publish periodically to the judiciary and the general public the special committees' decisions. *Rules of Judicial Administration Rule 12.9(l).*

#### ***j. Special Committee's Decision is Final***

A decision of a special committee under this rule is not appealable but is subject to review by mandamus. *Rules of Judicial Administration Rule 12.9(m).* The right of review provided under this subdivision is not exclusive and does not preclude relief by mandamus. *Rules of Judicial Administration Rule 12.9(n).*

### **11. Sanctions**

A records custodian who fails to comply with this rule, knowing that the failure to comply is in violation of the rule, is subject to sanctions under the Code of Judicial Conduct. *Rules of Judicial Administration Rule 12.10.*

## **B. Public Access to Court Case Records**

As discussed at the beginning of the chapter, access to court case records is governed by common law or statute. Rule 12 of the Rules of Judicial Administration does not apply to court case records, it only applies to judicial records.

### **1. Definition of Court Case Record**

A court case record is any record created or filed in connection with any matter that is or has been before a court. It also includes any record that pertains to the court's adjudicative function even though the record is not related to a specific case.



## **2. General Rule**

Generally, case records are assumed to be open to the public unless they are sealed or access is limited by a specific statute.

## **3. Access Limited by Statute**

Access to the following records is limited:

- Arrest warrants, search warrants, or supporting affidavits *Code of Criminal Procedure Arts. 15.26; 18.01(b)*,
- Records in a case charging a child with a fine only misdemeanor other than a traffic offense, regardless of the outcome *Code of Criminal Procedure Art. 45.0217*,
- Records in a mental health case *Health and Safety Code §571.015*,
- Juror information sheets *Code of Criminal Procedure Art. 35.29*, and
- Fine only offense more than five years old *Code of Criminal Procedure Art. 45.0218*.

## **4. No Appeal for Denial of Access**

Since Rule 12 of the Rules of Judicial Administration does not apply to court records, the only way to challenge a denial of access to court records is to mandamus the judicial officer.

## **C. Confidentiality of Certain Information**

The following rules apply to both judicial records and court case records.

### **1. Confidentiality of Credit Card, Debit Card, Charge Card, and Access Device Numbers**

A credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential. *Government Code §552.136(b)*. A governmental body may redact the confidential information from any information the governmental body discloses under public information access laws without the necessity of requesting a decision from the attorney general. *Government Code §552.136(c)*.

If a governmental body redacts or withholds information without requesting a decision from the attorney general about whether the information may be redacted or withheld, the requestor is entitled to seek a decision from the attorney general about the matter. *Government Code §552.136(d)*. The procedure for review by the attorney general is discussed in Section 552.136(d) of the Government Code.

### **2. Confidentiality of Certain E-mail Addresses**

An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure. *Government Code §552.137(a)*. Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release. *Government Code §552.137(b)*.

## CHAPTER 10: ADDITIONAL RESOURCES

### A. Confidentiality of a Justice's Home Address

The county registrar is required to omit a state judge's home address from the registration list when they receive an application to become registered to vote from a state judge. A justice of the peace is considered a state judge for this purpose. *Election Code §13.0021*.

Under Section 25.02 of the Tax Code, home address information for justices of the peace are confidential and available only for the official use of the appraisal district, the state, the comptroller, and taxing units and political subdivisions. It is the responsibility of the Office of Court Administration to notify the appraisal district that a justice's information needs to be restricted. *Tax Code §25.02*.

### B. License to Carry a Handgun

An active judicial officer, including a justice of the peace, is allowed to apply for a license to carry a handgun. The application and proficiency requirements are different from those for non-judicial officers wishing to obtain a carry license.

This book does not discuss where a judicial officer may carry a handgun, it only addresses the application process and qualification requirements.

#### 1. What the Justice Must Submit to DPS

As a justice of the peace applicant must submit to the Department of Public Safety:

- A completed application, including all required affidavits, on a form provided by DPS,
- One or more photographs of the applicant that meet the requirements,
- Two complete sets of legible and classifiable fingerprints of the applicant, including one set taken by a person employed by a law enforcement agency who is appropriately trained in recording fingerprints,
- Evidence of handgun proficiency, and
- A non-refundable application and license fee of \$25.

*Government Code §411.201(d)*.

#### 2. Proficiency Requirements

A justice of the peace applying for a carry license must satisfy the handgun proficiency requirements of Section 411.118, except that the classroom instruction part of the proficiency course for an active judicial officer does not have a minimum hour requirement.

Additionally, proficiency instruction only has to include instruction on handgun use, proficiency, safety, and proper storage practices for handguns, with an emphasis on storage practices that eliminate the possibility of accidental injury to a child. *Government Code §411.201(f)*.

How do I know if my information has been blocked?

Confidentiality of a justice's address is automatic, but you can contact your county registrar and the Office of Court Administration to make sure it has actually been done.

An applicant still has to receive range instruction and must demonstrate the applicant's ability to safely and proficiently use a handgun. An applicant must be able to demonstrate, at a minimum, the degree of proficiency that is required to effectively operate a handgun. *Government Code 411.188(a)*.

## Do I have to take the shooting test?

Yes. To get a carry license, a justice of the peace still has to demonstrate proficiency with a handgun.

## C. Texas Lawyer's Assistance Program (TLAP)

### 1. Not Just for Lawyers

Judges can call the TLAP Hotline at 800-343-8527 or 512-427-1453. Judges can also call the Judges' Line at 800-219-6474 or go to the website at [www.tlaphelps.org](http://www.tlaphelps.org). The identity of the caller can remain confidential.

### 2. Do It for Yourself or Another Needing Help

Judges calling for themselves can receive coaching and education about practical, immediate, and long-term solutions and options. If a judge calls about an impaired lawyer or judge, in order to fulfill their ethical obligation to report, the impaired lawyer or judge will not get in any trouble and the fact their name has been given to TLAP will not be reported or made public in any way. TLAP staff and volunteer lawyers or judges will merely contact the impaired lawyer or judge to offer help and/or educate on available services.

### 3. Services

TLAP Services Include:

- Crisis counseling, coaching, and referral,
- Referrals to resources for counselors, therapists, psychologists, and psychiatrists based on geographical location,
- Recommendations for out-patient and in-patient treatment programs, and
- Match judges with local peer volunteers and/or support groups

## D. Intimate Partner Violence Resources

The Office of Court Administration has put together a Domestic Violence Resource Program to help those involved in an intimate partner violence situation. In addition to the resources provided here, additional free resources can be accessed at [www.txcourts.gov/dvrp](http://www.txcourts.gov/dvrp).

### 1. Texas Council on Family Violence:

- [www.tcfv.org](http://www.tcfv.org)
- Domestic Violence Service Directory
- Honoring Texas Victims

## **2. National Domestic Violence Hotline:**

- [www.ndvh.org](http://www.ndvh.org)
- (800) 799-SAFE (7233)

## **3. Office on Violence Against Women of U.S. Department of Justice:**

- [www.ojp.usdoj.gov/vawo](http://www.ojp.usdoj.gov/vawo)

## **4. Family Justice Center Alliance:**

- [www.familyjusticecenter.org](http://www.familyjusticecenter.org)

## **5. National Center for Domestic and Sexual Violence:**

- [www.ncdsv.org](http://www.ncdsv.org)

## **6. Office of Court Administration Domestic Violence Resource Program**

- <http://www.txcourts.gov/dvrp/domestic-violence-resource-program.aspx>
  - Webinars
- <http://www.txcourts.gov/publications-training/training-materials/domesticviolence-information.aspx>
  - Protective Order Resource Attorney
  - Texas Family Violence Benchbook
  - Texas Court Remote Interpreter Service
  - DPS Protective Order Data Entry Form
  - Supreme Court Protective Order Kit
  - Protective Order Warnings (Spanish language translation with audio)

## **7. Texas Municipal Courts Education Center**

- [http://www.tmcec.com/resources/books/bench\\_book/](http://www.tmcec.com/resources/books/bench_book/)
- [http://www.tmcec.com/resources/books/forms\\_book/](http://www.tmcec.com/resources/books/forms_book/)

## **E. Helpful Contact Information**

Often, this contact information is only for justices of the peace and not the general public. Check the organizations' websites to confirm if these numbers and emails may be given to the public.

### **1. Office of Court Administration (OCA)**

- Phone: 512-463-1625
- Personal information updates - [directoryupdates@courts.state.tx.us](mailto:directoryupdates@courts.state.tx.us)

### **2. Texas State Library Archives Commission**

- Records Retention:
  - Email: [slrminfo@tsl.texas.gov](mailto:slrminfo@tsl.texas.gov)
  - Phone: 512-463-7610
  - [www.tsl.texas.gov/slrm](http://www.tsl.texas.gov/slrm)

### 3. State Commission on Judicial Conduct

- Phone: 877-228-5750

### 4. Local Mental Health Authorities (LMHAs)

- To find a list of LMHAs, visit [www.dshs.texas.gov/mhsa/lmha-list](http://www.dshs.texas.gov/mhsa/lmha-list)

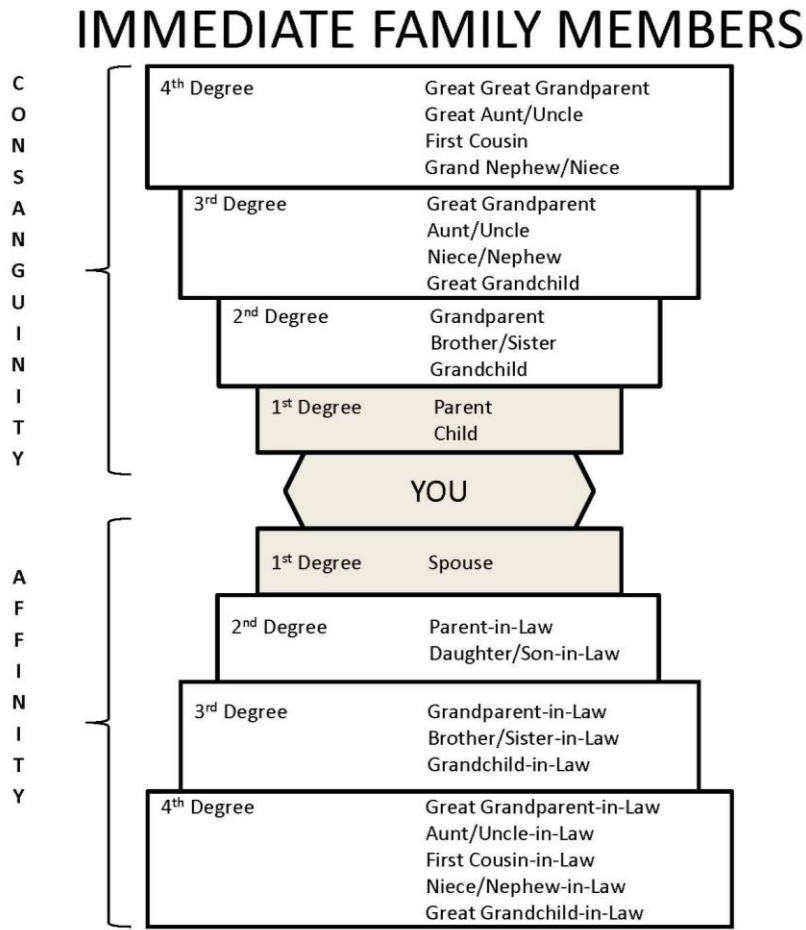
### 5. Texas Vital Statistics

- Electronic Death Registration
  - Texas Electronic Registrar (TER) Help Desk Email: [help-ter@dshs.texas.gov](mailto:help-ter@dshs.texas.gov)
  - Phone: 512-776-3490

## F. Documents Referenced in the Text

The following documents have been referenced in the text and are included for the purpose of helping a justice of the peace successfully fulfill his or her obligations as an elected official.

### 1. Consanguinity and Affinity Chart



Note: Step relationships (step-brother, step-father, etc.) are considered to be the same as blood relationships.

# Before the Presiding Judges of the Administrative Judicial Regions

## Per Curiam Rule 12 Decision

**APPEAL NO.:** 00-001

**RESPONDENT:** J. B. Marshall, Jr., Presiding Judge, Pflugerville Municipal Court

**DATE:** February 4, 2000

**SPECIAL COMMITTEE:** Judge Pat McDowell, Judge Olen Underwood, Judge B. B. Schraub, Judge Darrell Hester, Judge Ray D. Anderson

The applicant is an individual who has requested that the Pflugerville Municipal Court allow him to view traffic citations for research he is conducting regarding “how the city of Pflugerville does business regarding traffic citations.” The presiding judge of the municipal court has refused access to the traffic citation records on the ground that they are exempt under the provisions of Rule 12.5(d) of the Rules of Judicial Administration. The applicant has filed a petition for review of this denial of access.

The threshold issue in a Rule 12 appeal is whether the records are “judicial records,” which are defined by Rule 12.2(d) as follows:

“*Judicial record* means a record made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function, regardless of whether that function relates to a specific case. A record of any nature created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record.”

Traffic citation records pertain to the municipal court’s adjudicative function and are created, produced, and filed in connection with matters that are or have been before the municipal court. Thus, they are not judicial records within the meaning of Rule 12, and we cannot decide the question of whether they are exempt from disclosure. Accordingly, we can neither grant the petition in whole or in part nor sustain the denial of access to the requested record. Nevertheless, we will explain the duties of a court in relation to public access to case records of this type.

As previously discussed, Rule 12 is a new rule designed to define public access to judicial records, which are those records *not* related to a court’s adjudicative function. Other records, which are related to a court’s adjudicative function, are subject to other rules or laws. For purposes of this discussion, we will call those records “court records.”

Rule 76a of the Texas Rules of Civil Procedure governs public access to civil court records. It provides that civil court records “are presumed to be open to the general public.” They may be sealed only upon a showing of “a specific, serious and substantial interest which clearly outweighs . . . this presumption of openness; [and] any probable adverse effect that sealing will have upon the general public health or

safety; [and that] no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted.”

Public access to criminal court records, such as those at issue here, are governed by common law and constitutional law. The common law right to public access was articulated by the United States Supreme Court in *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597, 98 S.Ct. 1306, 1312 (1978), as follows:

“It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents. In contrast to the English practice, . . . American decisions generally do not condition enforcement of this right on a proprietary interest in the document or upon a need for it as evidence in a lawsuit. The interest necessary to support the issuance of a writ compelling access has been found, for example, in the citizen’s desire to keep a watchful eye on the workings of public agencies . . . .”

The constitutional law relating to public access to criminal court records was summarized by the court in *Express-News Corp. v. MacRae*, 787 S.W.2d 451, 452 (Tex. App.–San Antonio 1990), as follows:

“The public’s right to public trials under the First and Fourteenth Amendments to the United States Constitution includes a presumption that judicial records will be open to inspection by the press and public. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597, 98 S.Ct. 1306, 1312 (1978). This presumption of openness may be overcome by a countervailing interest, such as the defendant’s right to a fair trial, but the reason for closure or sealing must be apparent and clearly articulated. *Richmond Newspapers v. Virginia*, 448 U.S. 555, 581, 100 S.Ct. 2814, 2829-30 (1980); *Houston Chronicle Publishing Co. v. Hardy*, 578 S.W.2d 495, 499 (Tex. App.–Corpus Christi, 1984), *cert. denied*, 470 U.S. 1052, 105 S.Ct. 1754 (1985).”

In *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992), the court conditionally granted a writ of mandamus against a trial court which had prohibited a newspaper from publishing the identity of a rape victim which had already been disclosed in an indictment, a motion in limine, and a charge to the jury. The court held that once they are filed with the court, court records become public records.

Although court records are not records covered by the Public Information Act (formerly “Open Records Act”), Texas Government Code §552.001 et seq., several attorney general open records letters have discussed the issue, and found a right to public access. OR99-1825 (traffic citations are subject to disclosure under common-law right to copy and inspect court records and statutory law governing municipal courts); OR99-2611 (personal information such as place of employment, work and home telephone numbers of the accused which are found in traffic citations maintained by police department are not exempt from disclosure); OR99-0766 (traffic citations maintained by city are subject to Public Information Act); OR99-3698 (distinguishing between records maintained solely by municipal court and those also maintained by city).

For the reasons stated, this review committee can neither grant the petition in whole or in part nor sustain the denial of access to the requested records.



# Before the Presiding Judges of the Administrative Judicial Regions

## Per Curiam Rule 12 Decision

**APPEAL NO.:** 06-001

**RESPONDENT:** Sherri Adelstein, Denton County District Clerk

**DATE:** April 7, 2006

**SPECIAL COMMITTEE:** Judge B. B. Schraub, Chairman; Judge John Ovard; Judge David Peeples; Judge Olen Underwood; Judge Stephen B. Ables

Applicant requested information on payments made from the 393rd Judicial District Court to attorneys appointed as attorneys or guardians *ad litem* for the years 2002 to the present, and the request was denied. The Respondent agrees with Applicant that the records are judicial records within the definition of Rule 12.2(d), but claims that the records are exempt from disclosure under Rule 12.5. In response to the request of the Special Committee, Respondent submitted for in camera inspection copies of three types of documents that would be responsive to the request but which are claimed to be exempt from disclosure.

In Order No. 94-9143, the Supreme Court of Texas requires district clerks to send monthly reports to the Office of Court Administration (OCA) listing each fee paid during that month in the amount of \$500 or more for each appointment made in a civil case, probate case, or proceeding governed by Titles 1, 2, or 4 of the Texas Family Code. The report must include the name of the person appointed, the name of the judge approving the fee, the case number and style of the case, the date of the order, the position to which the person was appointed, and the amount and source of the fee. Section 6 of the order provides as follows:

“The clerk shall make a copy of this report available for public inspection in the clerk’s office, and shall, before the twentieth day of the month following the month reported, transmit a copy of the report to the Supreme Court through the State Office of Court Administration in Austin.”

Both the Supreme Court order and Section 71.035 of the Texas Government Code require district clerks to maintain copies of the monthly reports for at least two years and to make them available to the public for inspection and reproduction.

One set of documents that Respondent alleges to be exempt from disclosure is the monthly reports from the clerk to OCA. Another set of documents is a copy of the court’s trust account check register consisting of transactional reports listing deposits made in the court’s trust account maintained by the district clerk. This report lists the name of the court appointed attorney, the invoice number, the amount of the check, and the check number. The third set of documents is a

spreadsheet that contains a compilation of the data in the required monthly reports, with additional information about the nature of the suit and the payments. All of the records are public in nature and would be subject to disclosure unless exempted by Rule 12.

Litigation is pending in the 393rd District Court of Denton County alleging that the district judge of that court improperly ordered payment of ad litem fees to various attorneys. The Respondent alleges that this pending

litigation makes the requested documents exempt from disclosure under Rule 12.5(j), which provides as follows:

“(j) Litigation or Settlement Negotiations. Any judicial record relating to civil or criminal litigation or settlement negotiations:

- (1) in which a court or judicial agency is or may be a party; or
- (2) in which a judicial officer or member of a judicial agency is or may be a party as a consequence of the person’s office or employment.”

The monthly reports to OCA and the trust account register reports are inherently public documents and are required to be created and maintained in the regular course of the clerk’s business. The fact that these reports also may be relevant evidence in a lawsuit that relates to a court or judge or judicial officer cannot strip them of their public nature. Accordingly, those records are subject to disclosure, and we grant the petition for access to these clerk’s reports.

According to Respondent, the clerk created the spreadsheet at the request of the judge in anticipation of litigation in which she is or may be named a party. We express no opinion regarding whether the spreadsheet is subject to disclosure pursuant to the Rules of Civil Procedure. We find it is exempt from disclosure under Rule 12.5(j), and we deny the petition for access to the spreadsheet.

## CHAPTER 11: APPENDIX OF CASES

12 Tex. Jur. 3d, Clerks of Court §1 (1993).  
60 Tex. Jur. 3d Public Officers and Employees §149 (1988).  
Alpert v. Gerstner, 232 S.W.3d 117, 127 (Tex. App.—Houston [1st Dist.] 2006, pet. denied)  
Att’y. Gen. Op. No. H-671(1975).  
Att’y. Gen. Op. No. JM-373(1985).  
Att’y. Gen. Op. No. MW-456 (1982).  
Att’y. Gen. Op. No. O-5606 (1943);  
Att’y. Gen. Op. No. O-84 (1939)  
Ballantyne v. Champion Builders 144 SW3d 417.  
Barta v. Loessin 195 S.W.2d 731, 731.  
Cameron v. Greenhill 582 S.W.2d 775, 776.  
Couch v. Babb, 423 S.W. 2d 464 (Tex. Civ. App. – Beaumont 1968, writ ref’d n.r.e.);  
Creosoted Block Paving Co. v. McKay, 211 S.W. 822, 824 (Tex. Civ. App. 1919, no writ)  
Cummings v. State, 36 S.W. 399 (Tex. Crim. App. 1896).  
Delcourt v. Silverman, 919 S.W.2d 777, 782 (Tex. App. Houston 14th Dist. 1996).  
EPISD v. McIntyre 457 S.W.3d 475.  
Ethics Op. No. 106 (1987).  
Ex parte Aldridge, 331 S.W.2d161 (Tex. Crim. App. 1991).  
Ex parte Calbrillo Amaya, 748 S.W. 2d 224 (Tex. 1988);  
Ex parte Davis, 353 S.W. 2d 29, 34 (Tex. Crim. App. 1962).  
Ex parte DeLeon, 972 S.W. 2d, 25 (Tex. 1998);  
Ex parte DeWees, 210 S.W. 2d 145, 146-47 (Tex. 1948).  
Ex parte Hart, 520 S.W. 2d 952, 953-54 (Tex. Div. App. – Dallas 1975, no writ).  
Ex parte Howell, 488 S.W. 2d 123, 126 (Tex. Crim. App. 1972), appeal dismissed by Howell v.  
Jones, 414 U.S. 803 (1973), rehearing denied 414 S.W. 1052 (1973), rehearing denied 424 U.S.  
936 (1976).  
Ex parte Knable, 818 S.W. 2d 811, 814 (Tex. Crim. App. 1991);  
Ex parte Mackin, 353 S.W. 2d 453 (Tex. Crim. App. 1962).  
Ex parte McGraw, 277 S.W. 699, 700 (Tex. Crim. App. 1925).];  
Ex parte Richmond 14 S.W.2d 851, 852  
Ex parte Sentell, 266 S.W. 2d 365, 370 (Tex. 1954).  
Ex parte Slavin,412 S.W.2d 257(Tex. 1995).  
Ex parte Sproull, 815 S.W. 2d 250 (Tex. 1991);  
Ex parte Ustick, 9 S.W. 3d 922, 924 (Tex. App. – Waco 2000).];  
Ex parte Werblud 356 S.W. 2d 542  
Ex parte Woodyard, 952 S.W. 2d 104,107 (Tex. App. – San Antonio 1997, no writ).  
French v. State 572 S.W. 934.  
Gonzalez v. Avalos, 866 S.W.2d 346 (Tex. App. – El Paso 1993).  
Hardeman v. State 868 S.W.2d 404, 405  
Harrison v. Lokey 63 S.W. 1030, 1031.  
Huston v. State 843 S.W.2d 106, 107.  
Judicial Opinion 106 (1987).  
Judicial Opinion 172 (1994).  
Judicial Opinion 193 (1996).  
Judicial Opinion 194 (1996).  
Judicial Opinion 198 (1996).  
Judicial Opinion 203 (1996).  
Judicial Opinion 204 (1997).

Judicial Opinion 209 (1997).  
Judicial Opinion 215 (1997).  
Judicial Opinion 222 (1998).  
Judicial Opinion 224 (1998).  
Judicial Opinion 225 (1998).  
Judicial Opinion 236 (1998).  
Judicial Opinion 240 (1999).  
Judicial Opinion 242 (1999).  
Judicial Opinion 245 (1999).  
Judicial Opinion 248 (1999).  
Judicial Opinion 249 (1999).  
Judicial Opinion 251 (1999).  
Judicial Opinion 253 (1999).  
Judicial Opinion 73 (1984).  
Kosminsky v. Raymond, 51 S.W. 51, 52 (Tex. Civ. App. 1899, writ dismissed).  
Kreugel v. Williams, 153 S.W. 903, 904 (Tex. Civ. App. – Dallas 1913, writ refused).  
Medearis v. Medearis, 487 S.W. 2d, 198, 199 (Tex. Civ. App. – Austin, 1972, no writ).  
Merritt v. Harris County, 775 S.W. 2d 17, 23 (Tex. App. – Houston [14th Dist.], 1989, writ denied).  
Morris v. Dunn, 164 S.W. 2d 562 (Tex. Civ. App. – Fort Worth 1942, no writ).  
Mullenix v. Luna 136 S. Ct. 305.  
Obergefell v. Hodges 576 U.S.(2015).  
Op. A.G. No. GA-0145 (2004).  
Op. Tex. Att’y. Gen. No. JM-517 (1986).  
Op. Tex. Att’y. Gen. No. LO 96-056(1996).  
Op. Tex. Att’y. Gen. No. LO93-45 (1993)  
Richardson v. Parker 903 S.W.2d 801.  
Ruiz v. State 540 S.W.2d 809, 911.  
Sitton v. American Insurance Co., 390 S.W. 2d 34, 35 (Tex. Civ. App. – Texarkana 1965), writ refused n.r.e.).  
Spencer v. City of Seagoville, 700 S.W.2d 953, 957-58 (Tex. App.--Dallas 1985, no writ)  
Stump v. Sparkman 98 S.Ct. 1099.  
Talamantez v. State 829 S.W.2d 174, 184.  
Tarrant County v. Ashmore 635 S.W.2d 417, 422  
Terrell v. Chambers, 630 S.W. 2d 800, 802 (Tex. App. – Tyler 1982, writ refused n.r.e.;  
Tex. Att’y. Gen. Letter Opinion No. 0-3576 (1941).  
Tex. Att’y. Gen. Letter Opinion No. GA-0077 (2003).  
Tex. Att’y. Gen. Letter Opinion No. GA-0738(2009).  
Turner v. Trinity ISD 700 S.W.2d 1,2  
Wilson v. Simpson, 4 S.W. 839, 843 (Tex. 1887).